Decision 12-11-025 November 29, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking regarding policies and protocols for demand response load impact estimates, cost-effectiveness methodologies, megawatt goals and alignment with California Independent System Operator Market Design Protocols.	Rulemaking 07-01-041 (Filed January 25, 2007)

DECISION ADOPTING POLICIES FOR DEMAND RESPONSE DIRECT PARTICIPATION

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DECISION ADOPTING POLICIES FOR DEMAND RESPONSE DIRECT PARTICIPATION

1. Summary

This decision resolves several policy issues that must be addressed prior to the refinement and adoption of Electric Rule 24, the demand response direct participation rule. We do not anticipate a need for financial settlements between load serving entities and demand response providers for any demand response resources bid into the California Independent System Operator's (CAISOs) wholesale energy market. We confirm that the Commission has jurisdictional oversight over all demand response providers serving Commission-regulated utilities' bundled customers. Thus, we require these demand response providers to register with the Commission, comply with Electric Rule 24, and sign the service agreements with the CAISO and the Commission-regulated utilities. We note, however, that because of external customer protections currently in place, we limit our oversight of third-party demand response providers serving medium and large commercial and industrial bundled customers. We establish policies regarding several aspects of the proposed direct participation rule including those regarding credit requirements and access to customer data.

In order to finalize the direct participation phase of this proceeding, this decision requires staff to schedule workshop(s) to refine Electric Rule 24 and the associated registration form and standard service agreement, after which time Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company will jointly submit a Tier Three advice letter to seek Commission approval of the proposed rule, registration form, and service agreement. Finally, we direct the three utilities to each submit an application for cost recovery following the approval of Electric Rule 24.

This decision concludes Phase IV of Rulemaking (R.) 07-01-041. Previously, Phases I and III of this proceeding were completed and closed. The Commission will develop and issue a new Order Instituting Rulemaking to address certain demand response issues that may not have been resolved in Phase II of this proceeding or were raised in Decision 12-04-045.[1] R.07-01-041 is closed.

2. Background

2.1. Federal Energy Regulatory Commission (FERC) Order 719

On February 22, 2008, the FERC issued a Notice of Proposed Rulemaking on "Wholesale Competition in Regions with Organized Electric Markets."[2] In that proposed rulemaking, the FERC planned to require Independent Systems Operators (ISOs), such as the California Independent System Operator (CAISO), to revise their tariffs to create direct bid-in opportunities for retail customers and Demand Response (DR) aggregators so as to expand DR opportunities in organized energy markets. On October 17, 2008, the FERC issued Order 719 to improve the operation of organized wholesale energy markets in several areas, including DR.[3] In Order 719, the FERC required ISOs to modify their tariffs to allow retail customers to bid DR directly into the ISOs' wholesale energy and ancillary services markets, either on their own behalf

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[1] Decision 12-04-045 adopted demand response programs and budgets for years 2012-2014.

[2] FERC Docket Nos. RM07-17-000 and AD07-7-000, sometimes referred to as the "Competition Proceeding."

[3] Wholesale Competition in Regions with Organized Electric Markets, (Order 719), issued October 17, 2008 in RM 07-19 and AD07-7.

or through aggregators,[4] if the relevant state or regional authorities do not prohibit such direct bidding. Currently, neither California aggregators nor individual retail bundled customers bid DR resources directly into the wholesale energy market.

2.2. CAISO DR Markets

For several years, the CAISO has engaged in substantial efforts to integrate retail DR programs with its wholesale energy markets. As part of its Market Redesign and Technology Upgrade (MRTU),[5] the CAISO has engaged stakeholders in designing market products where DR can be bid into wholesale energy markets just as traditional generation can be done today. Through this stakeholder process, the CAISO has developed two wholesale energy market products to comply with the previously discussed FERC Order 719: Proxy Demand Resource (PDR) and Reliability Demand Response Resource (RDRR).[6]

[4] Aggregators are private entities that combine retail end-use customers' DR capabilities into larger resource pools and then offer those resources to an electric utility or grid operator in return for energy and/or capacity payments.

[5] MRTU manages transmission congestion and dispatches generation based on a model that accurately depicts available capacity and constraints on the CAISO controlled grid across various market time frames to help ensure that market outcomes are consistent with real-time operation of the transmission grid.

[6] As originally proposed to the FERC, RDRR would enable emergency responsive DR resources to integrate into the CAISO market and operations. On February 16, 2012, the FERC rejected the CAISO's proposed RDRR tariff and provisions.

PDR enables DR participation, as a single resource or an aggregation of resources, in the wholesale day-ahead and/or real-time energy markets and in the Ancillary Services[7] market. Under the original filing to FERC, CAISO proposed to treat PDR like generation, and pay the full Locational Marginal Price (LMP).[8] The originally filed tariff proposed that when bids clear the market, a winning bid would receive the LMP and the Load Serving Entity (LSE) would receive an uninstructed energy payment or debit.[9] The originally proposed tariff also applied a Default Load Adjustment (DLA) to ensure that the LSE would not receive a payment for both the bid and the uninstructed energy. The CAISO refers to this as the "double payment" issue. In July 2010, the FERC conditionally approved the CAISO's PDR tariff.[10] However, the FERC would subsequently find deficiencies in the tariff and require revisions, as discussed in the following sections.

2.3. Commission Procedural Background

On January 25, 2007, the Commission opened Rulemaking (R.) 07-01-041 to address several specific issues related to the Commission's efforts to develop effective DR programs for California's investor-owned electric

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[7] CAISO defines Ancillary Services as those which support the transmission of Energy from Generation resources to Loads while maintaining reliable operation of the CAISO Controlled Grid in accordance with Western Electricity Coordinating Council and Good Utility Practice. (See CAISO Fifth Replacement Tariff, Appendix A, Master Definition Supplement, January 11, 2012.)

[8] The Locational Marginal Price is compensation for the service provided to the energy market at the market price for energy. (See 134 FERC Section 61, 187 at Summary.)

[9] Uninstructed energy payments compensate load bidders for energy scheduled but not consumed because the load is curtailed.

[10] 132 FERC §61,045 Order Conditionally Accepting Tariff Changes and Directing Compliance Filing, Docket No. ER10-765-000, July 15, 2010.

utilities (Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (jointly, the Utilities)). A Ruling and Scoping Memo issued on April 18, 2007 initially divided the proceeding into two phases. Phase 1, which began in the spring of 2007, focused on the development of measurement and evaluation protocols and methodologies related to existing and future DR activities. Phase 2, which was formally launched on October 1, 2007, focused on establishing DR goals. The April 2007 Scoping Ruling also required the Utilities, and allowed other parties, to develop and submit straw proposals on load impact estimations and cost effectiveness protocols. Following several workshops, staff reports, and opportunities for party comments, the Commission approved Decision (D.) 08-04-050 adopting load impact protocols. In December 2010, the Commission approved cost-effectiveness protocols for DR programs through the adoption of D.10-12-024 which also closed Phase I of this rulemaking.

On July 18, 2008, the assigned Commissioner issued a Ruling opening Phase III of this proceeding, to align the Utilities' emergency-triggered DR programs with the wholesale energy markets. Phase III was initially addressed on an interim basis through caps on the Utilities' DR reliability programs adopted by the Commission in D.10-06-034 through Application 08-06-001, et al. After a brief delay to await the CAISO development of its MRTU, Phase III was reopened and rescheduled through a July 8, 2009 Ruling. Workshops were held in August 2009, followed by settlement meetings between the parties. On June 4, 2010, the Commission approved D.10-06-034, which adopted a settlement agreement of the issues in Phase III. D.10-06-034 also closed Phase III of this proceeding.

On November 9, 2009, the Commission opened Phase IV of this proceeding[11] to address issues resulting from FERC Order 719, described above. On June 3, 2010, the Commission issued D.10-06-002, establishing the initial conditions under which the Commission will oversee bidding of retail DR directly into the CAISO markets.[12] That decision also outlined the issues that must be resolved before allowing direct bidding into the CAISO markets of DR provided by retail customers of the Utilities. D.10-12-016 denied rehearing of D.10-06-002 and confirmed the Commission's broad regulatory authority over energy matters and its jurisdiction, to a degree, over DR providers.[13]

After a series of workshops, proposals by the parties, and rounds of comments, the assigned Administrative Law Judge (ALJ) issued a Ruling asking for comments on a proposed direct participation rule, Electric Rule 24, developed by Commission staff.[14] The proposed Rule 24 addresses consumer protections and communications issues, but not the potential financial settlement issues. Parties submitted comments and reply comments to the proposed Rule on September 23, 2011 and October 7, 2011, respectively.

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[11] Assigned Commissioner and Administrative Law Judges' Ruling Amending Scoping Memo, Establishing a Direct Participation Phase of this Proceeding, and Requesting Comment on Direct Participation of Retail Demand Response in CAISO Electricity Markets, November 9, 2009.

[12] On April 28, 2009, the CAISO submitted a compliance filing (PDR tariff) to the FERC pursuant to Order 719 that proposed moving forward with the FERC's directed tariff modifications concurrently with the implementation of the second generation of the CAISO's MRTU tariff.

[13] D.10-12-060 at 4.

[14] ALJ Ruling, issued August 19, 2011.

2.4. FERC Orders 745 and 745-A

During approximately the same time period that the Commission developed the proposed Rule 24, the FERC issued Orders 745 and 745-A, raising questions regarding the viability of the current CAISO PDR tariff.

FERC Order 745[15] requires that DR "resources must be compensated for the service it provides to the energy market at the market price for energy, referred to as the [LMP.] This approach for compensating demand response resources helps to ensure the competitiveness of organized wholesale energy markets and remove barriers to the participation of demand response resources, thus ensuring just and reasonable wholesale rates."[16]

FERC Order 745-A denied rehearing of Order 745 and granted in part and denied in part clarification of certain provisions of Order 745. Most relative to this proceeding, 745-A rejected arguments made by the Commission that, through 745-A, the FERC is interfering with existing DR programs and, thus, state jurisdiction. In 745-A, the FERC responded that it is not regulating retail rates or usurping state jurisdiction of DR.[17] Additionally, the CAISO had petitioned to the FERC complaining that paying LMP, rather than LMP-G (i.e., the LMP minus a proxy value of traditional thermal generation), leads to distorted price levels and usage.[18] In 745-A, the FERC reiterated that DR

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[15] Demand Response Compensation in Organized Wholesale Energy Markets, Order No. 745, 18 CFR Part 35, March 15, 2011 (Order 745).

[16] FERC Order 745 Summary.

[17] FERC Order 745 at 32.

[18] CAISO's PDR tariff filing was predicated on a price of LMP-G.

resources can be cost-effective, as determined by the Net Benefits Test (NBT),[19] for balancing supply and demand; therefore DR resources should receive nothing less than LMP.[20]

Through comments filed with the Commission, several parties expressed concern that FERC Orders 745 and 745-A conflicted directly with the Commission's ongoing efforts to develop financial compensation rules between DR providers, LSEs, and retail end-use customers in accordance with the CAISO's PDR tariff that the FERC previously held to be just and reasonable.[21] Notably, the FERC Orders disallowed the use of any payment except for the LMP, thus making it difficult for wholesale energy markets to rectify any alleged LSE undercollection problem caused by the DLA through a financial settlement with the DR providers.

In order to comply with FERC Orders 745 and 745-A, the CAISO submitted a revised PDR tariff to the FERC eliminating the DLA for any bids above the NBT. Pursuant to FERC Orders 745 and 745-A, the CAISO relied on the FERC conclusion that bids above the NBT are cost-effective and thus paying the LMP reimburses cost-effective DR at the same level as generation, without any overcompensation.[22]

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[19] The NBT determines whether a demand response resource is cost-effective; i.e. can be paid the full Locational Marginal Price. (See FERC Order 745 at paragraph 78.)

[20] FERC Order 745 at 58.

[21] See comments and reply comments to the proposed Rule 24 filed on September 23, 2011 and October 7, 2011, respectively.

[22] Order No. 745, FERC Stats & Regs. Paragraph 31, 281 at 154 (citing DR Supporters August 30, 2010 Reply Comments (Kahn Affidavit at 9-10)).

On July 27, 2012, the assigned ALJ issued a Ruling soliciting comments regarding the impact of FERC Orders 745 and 745-A on the resolution of the Commission's direct participation policies. Parties filed comments on August 17, 012 and replies on August 27, 2012. This decision addresses the questions regarding FERC Orders 745 and 745-A as well as the remaining policy issues in Phase IV, the Direct Participation phase, of this proceeding.

3. Issues Before the Commission

The issues before the Commission are relevant solely to Phase IV. The November 9, 2009 Ruling explained that it was necessary to amend the scope of proceeding R.07-01-041 in order to "add a new Direct Participation Phase and address several legal, policy, and technical issues related to the expansion of DR aggregation and bidding activities in California."[23] In addition, the Ruling explained that the scope of the rulemaking should also identify potential barriers to direct bid-in as required by the CAISO by FERC. The Ruling requested parties to respond to and comment on questions posed in Appendix A to the Ruling and identify any additional issues beyond those included in the appendix.[24]

D.10-06-002 established the initial conditions under which the Commission will oversee retail DR direct participation. That decision also outlined the issues

[23] Assigned Commissioner and ALJ's Ruling Amending Scoping Memo, Establishing a Direct Participation Phase of this Proceeding, and Requesting Comment on Direct Participation of Retail DR in CAISO Electricity Markets, November 9, 2009 at 8.

[24] The questions in the appendix fell into five categories: 1) laws, decisions or procedures impeding customers or aggregators from directly bidding into CAISO markets; 2) communications and settlement concerns where multiple scheduling coordinators per meter are permitted; 3) opportunities for gaming and/or excessive payments; 4) gaming implications for baseline calculations for Commission DR programs and CAISO determination of market performance; and 5) other issues such as bilateral contracts and complaint resolution.

that must still be resolved, including Commission oversight of programs and policies that apply generally to LSEs.[25] The decision found that the Commission should address several policy issues prior to the adoption of a retail direct participation rule. These policy issues include the need for financial settlement, clarifications regarding the applicability of the proposed rule, and polices regarding credit requirements, access to customer data and oversight of DR providers.[26]

In opening comments to the August 19, 2011 ALJ Ruling Soliciting Comments on proposed Rule 24, parties commented on technical aspects of and policy aspects associated with the proposed rule.[27] Additionally, the Utilities strongly recommended that the issue of financial settlement must be resolved prior to the adoption of a direct participation rule.[28]

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[25] D.10-06-002, June 3, 2010 at 2.

[26] D.10-06-002 at 2 and Findings of Fact Nos. 5 and 8.

[27] See, for example, Comments of the Alliance for Retail Energy Markets (AReM) and Direct Access Customer Coalition (DACC) on Proposed Energy Division Rules, September 23, 2011; Demand Response and Smart Grid Coalition (DRSG) Comments on Proposed DR Rules, September 23, 2011; Comments of the Division of Ratepayer Advocates (DRA) in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules, September 23, 2011; and Opening Comments on Proposed DR Rules of the Utilities, September 23, 2011.

[28] Opening Comments on Proposed DR Rules of the Utilities, September 23, 2011 at 3 and 11.

In this decision, we will focus on the policy aspects of retail DR direct participation, including the issues of financial settlements and policies needed prior to the adoption of the proposed DR direct participation rule. These policies cover the categories of applicability, registration, credit requirements, oversight, access to customer data, service request process, and complaint resolution. We will also schedule workshop(s) in order to refine the administrative and technical aspects of proposed Rule 24.

4. Discussion

4.1. Financial Settlements in Direct Participation

4.1.1. The "Missing Money" Issue

In D.10-06-002, the Commission raised the issue of alleged under-collection or "missing money"[29] arising from the direct bidding of DR resources; and concluded that the details related to a financial settlement on this issue were complex, beyond the current record of the proceeding, and therefore, should be resolved in a subsequent phase of this proceeding.[30] PG&E described the circumstances of this problem as follows:

> …a DR [provider] may bid DR into the CAISO's markets using PDRs comprised of portions of the LSE's load. If a DR [provider]'s bid for a PDR is accepted, then the DR [provider] is compensated for its accepted load reduction bid just as

[29] The "missing money" issue should not be confused with the "double-payment" issue discussed in Section 2.2 of this decision. While both are examples of under-collection, the "double-payment" issue refers to a potential duplication of payment for the same load to the LSE from CAISO whereas the "missing money" issue refers to the loss from the payment for generation of load when the load is curtailed and payment for the curtailment is received by an entity not paying for the generation.

[30] D.10-06-002 at 15 and Finding of Fact 8.

> though the PDR had a scheduled delivery of that amount of energy into the CAISO system.
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> As a consequence, the LSE pays for load it does not place on the CAISO grid, and the DR [provider] receives payment for energy it does not deliver into the CAISO grid.[31]

As described earlier, parties filed several sets of comments on the issue of financial settlements both before and after FERC issued Orders 745 and 745-A. These orders created ambiguity for CAISO's PDR tariff and further complicated the questions regarding financial settlement on the issue of "missing money." In response to FERC Order 745-A, the CAISO filed a revised PDR tariff in March 2012 eliminating the DLA.

On July 27, 2012, the assigned Commissioner and ALJ jointly issued a Ruling soliciting responses to questions arising from FERC orders 745 and 745-A regarding financial settlement issues. Parties were asked whether there remains a revenue shortfall or "missing money" problem for the Utilities, given that the FERC rejected the DLA method when DR is dispatched at a price above the NBT. Additionally, parties were asked whether the Commission should order a financial settlement to reconcile any "missing money" problem that occurs from bids below the NBT where the DLA is applied.

4.1.2. Financial Settlements for Bids At or Above the NBT

In comments and replies received on August 17, 2012 and August 27, 2012, most parties agreed that the elimination of DLA for bids above the NBT eliminated the need for a financial settlement. For example, the CAISO explains that although there may be "potential for revenue shortfall to cover the

[31] D.10-06-002 at 15 quoting PG&E Comments at 6.

"double payment" that the [DLA] was designed to prevent, it is more likely there will not be a revenue shortfall or "missing money" because in general the utility will receive more in revenue (through imbalance energy payments) than the utility would have received had the utility simply sold the (curtailed) power at the retail rate."[32] DRA agrees, stating that when DR is dispatched above the NBT, "the CAISO will allocate the payment to DR providers in proportion to the metered demand participating in the CAISO market. The [utility] involved would pay the CAISO only for the utility customers' actual energy use. Therefore, there will not be a revenue shortfall or "missing money" problem for the [utility] involved in this situation."[33] SCE concludes that "under FERC Order 745, when DR is dispatched above the NBT, CAISO recovers its payment to the DR [provider] by charging all load via an "uplift" and the "missing money" problem under the old PDR model disappears."[34]

In opening comments, PG&E disagreed with this view arguing that, "[a]s long as DR [providers] receive the full LMP for providing the DR and do not pay for the energy they sell back to the wholesale energy market as DR, this will constitute a subsidy for the DR [provider] that is paid by ratepayers. PG&E

[32] CAISO's Initial Response to the Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Order 745 and 745-A, August 17, 2012 at 2.

[33] DRA's Response on the Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Order 745 and 745-A, August 17, 2012 at 5.

[34] SCE's Comments on Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Orders 745 and 745-A, August 17, 2012 at 4.

characterizes this as a 'missing money' problem because ratepayers would pay for electricity they did not consume."[35]

We disagree with PG&E. As explained by the Joint DR Parties, "PG&E is equating DR with a sale-for-resale transaction. The FERC has stated that DR is not a sale-for-resale transaction but is 'a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payment designed to induce lower consumption of electric energy.'"[36] Furthermore, the FERC reiterated in Order 745-A, that for bids above NBT, i.e. bids that are deemed cost effective, paying LMP reflects the marginal value of a resource's contribution to the market, regardless of whether that resource provides generation or demand response.[37] In rejecting the argument that suppression of the LMP will result in unjust prices for generation, the FERC explains that DR resource participation helps to balance supply and demand, thus producing reasonable energy prices by lowering the amount of higher-cost generation dispatched to satisfy system demand.[38]

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[35] Opening Comments of PG&E to the July 27, 2012 Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Order 745 and 745-A, August 17, 2012 at 2.

[36] Joint Reply Comments Of Enernoc, Inc., Energy Connect (Johnson Controls, Inc.), Comverge, Inc., North America Power Partners (NAPP), and Viridity Energy, Inc., on the Joint Assigned Commissioner/ALJ Ruling on Questions Arising from FERC Orders 745 and 745-A at 3 quoting 18 CFR §35.28(b)(4).

[37] Order No. 745-A, FERC Stats. & Regs. Paragraph 68 at 29.

[38] Order No. 745, FERC Stats. & Regs. Paragraph 31, 322 at 10.

In reply comments, PG&E revised its position regarding financial settlements for bids above NBT. PG&E ultimately agreed with CAISO that, "LSEs may be minimally affected on balance by the uplift with the current market conditions and type of DR resources, which are typically peak shaving and used infrequently."[39] PG&E concluded that if the amount of DR resources that integrate with the CAISO market is limited, this should reduce the risk of harm to ratepayers.[40] PG&E added that "[i]f, in practice, it is shown that the ratepayers are on balance harmed by PDR and RDRR resources that clear above the NBT threshold price, the [Commission] should consider a financial settlement mechanism to hold ratepayers harmless."[41]

We see no need at this time for financial settlements for bids at or above the NBT. Cost-effective DR and generation sources should be compensated equally, and bids at or above the NBT are likely to be cost-effective. Should we determine that ratepayers are harmed by this practice, the Commission will revisit the matter of a financial settlement mechanism.

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[39] Reply Comments of PG&E to the July 27, 2012 Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Order 745 and 745-A, August 27, 2012 at 3 quoting CAISO's Initial Response to the Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Order 745 and 745-A, August 17, 2012 at 4-5.

[40] Reply Comments of PG&E to the July 27, 2012 Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Order 745 and 745-A, August 27, 2012 at 3.

[41] *Ibid*.

4.1.3. Financial Settlements for Bids Below the NBT

The CAISO's current PDR tariff still provides a DLA for bids below the NBT. We asked parties whether a financial settlement is necessary for these bids. Parties expressed differing views on this issue.

DRA, SDG&E and PG&E all argued in comments that for bids below the NBT, the Commission should require a financial settlement because the DLA remains present and creates a "missing money" issue for the Utilities.[42]

SCE recommended that the Commission adopt a provision barring bids below the NBT, saying that such bids send the wrong market signals.[43] While the CAISO stated that there was no need for financial settlements for bids below the NBT, the CAISO also revealed that it may consider submitting a filing at FERC barring such bids because the FERC find them to be not cost-effective.[44] Commission staff understands from discussion with CAISO staff that the use of different settlement systems for bids below the NBT than for bids at or above the NBT would be both complicated and inefficient given the low probability that

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[42] Response of DRA on the Joint Assigned Commissioner and the ALJ's Ruling Soliciting Responses to Questions Arising from FERC Orders 745 and 745-A, August 17, 2012 at 6-7; SDG&E's Opening Comments in Response to Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Orders 745 and 745-A, August 17, 2012 at 3; and Opening Comments of Pacific Gas and Electric Company to the July 27, 2012 Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Orders 745 and 745-A, August 17, 2012 at 4.

[43] SCE Comments on Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Orders 745 and 745-A, August 17, 2012 at 6.

[44] CAISO's Initial Response to the Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Order 745 and 745-A, August 17, 2012 at 7 and 10.

DR resources will choose to bid below the NBT, as such resources would get paid significantly less for their DR capabilities than if they bid at or above the NBT. The CAISO also suggested that the Commission explore whether it can bar such bidding.[45]

Two parties, Enernoc, Inc., Energy Connect, Comverge, Inc., North America Power Partners, and Viridity Energy, Inc. (Joint Parties) and DACC/AReM argue that there is no reason for the Commission to order a financial settlement for bids below the NBT; these bids will be rare.[46] The Joint Parties further argue that the Commission has no authority to order such a settlement.[47] In reply comments, the Joint Parties voice their preference that "if the Commission wants to discourage 'uneconomic' DR participation…the most efficient approach is for CAISO to file to FERC to eliminate compensation for DR that fails to pass the NBT."[48] The Joint Parties do not explain why or how this is the most efficient approach.

We agree with the CAISO and SCE that bids below the NBT are uneconomical, send the wrong signals, and should be barred. Given the current FERC directive that direct-bid DR should be paid LMP through the wholesale

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[45] CAISO's Initial Response to the Joint Assigned Commissioner and ALJ's Ruling Soliciting Responses to Questions Arising from FERC Order 745 and 745-A, August 17 2012 at 11.

[46] Joint Comments of Enernoc, Inc., Energy Connect, Comverge, Inc., North America Power Partners, and Viridity Energy, Inc. on the Joint Assigned Commissioner/ALJ Ruling on Questions Arising from FERC Orders 745 and 745-A, (Joint Parties) August 17, 2012 at 6 and Comments of the DACC/AReM on Joint Assigned Commissioner and ALJ's Questions, August 17, 2012 at 4.

[47] Joint Comments of Joint Parties, August 17, 2012 at 6.

[48] Joint Reply Comments of Joint Parties, August 27, 2012 at 6.

energy markets, it does not make sense to have a separate payment calculation for the unlikely event that a DR provider will bid below the NBT. We reaffirm our conclusion in D.10-06-002 and D.10-12-060 that "consistent with FERC Orders 719 and 719-A, direct bidding by retail consumers of DR resources in wholesale energy markets cannot go forward in California except as allowed by the Commission and consistent with the terms and conditions established by the Commission."[49] We thus prohibit DR aggregators that represent Commission jurisdictional bundled load to bid DR services below the NBT. During the workshop(s), stakeholders must discuss whether such terms should be included in the proposed Rule 24 and/or agreements between non-Utility DR providers and the Utilities.

In comment to this decision, EnerNOC recommends that the Commission require the CAISO to revise its tariffs to eliminate payments for bids below the NBT. EnerNOC contends that without this change, "there would be confusion as to avoid what the CAISO's tariff says, which would allow participation in the market with a particular payment attached."[50] In reply comments the CAISO disagrees with EnerNOC explaining that direction such as this should come through the FERC. Furthermore, the CAISO maintains that if the Commission approves the prohibition against bids below the NBT, modifications to the CAISO tariffs are not necessary.[51] We agree with the CAISO

[49] D.10-06-002, June 3, 2010 at Conclusion of Law 1.

[50] Comments of EnerNOC, Inc. on Proposed Decision Adopting Policies for Demand Response Direct Participation, November 14, 2012 at 3.

[51] Reply Comments of the CAISO on the Proposed Decision Adopting Policies for Demand Response Direct Participation, November 19, 2012 at 2.

that changes to the CAISO tariff are not necessary, unless the FERC makes such a requirement.

4.2. Policies for Direct Participation

As discussed above, Commission staff developed a draft Electric Rule 24, Direct Participation Demand Response (Rule 24 or Rule) (attached as Appendix B) following several workshops[52] and comments from the parties. The purpose of Rule 24 is to provide the administrative, technical, and financial mechanisms to allow DR providers to bid resources directly into the CAISO market while protecting customers and ratepayers. For the purposes of this decision and Rule 24, we define a DR provider as an entity currently engaged in providing DR service(s) to aggregate retail customers to bid loads on their behalf into the CAISO's wholesale energy market. A DR provider can also be a retail customer bidding its own load into the CAISO wholesale energy market. The proposed Rule defines the applicability and general terms and conditions for direct bidding of bundled resources while also providing some technical aspects of the operational functions. The proposed Rule establishes roles and functions of players in DR direct participation, as well as certain requirements for those roles that are within the state's purview.

After reviewing the comments received on the proposed Rule 24, we have concluded that there are several policy issues we must determine before the

[52] Staff hosted workshops on December 16-18, 2009 and January 19 – 21, 2011. SCE filed a report on each of these sets of workshops: Compliance Filing of SCE–Report on Direct Participation Phase Workshops, filed on January 8, 2010; and Compliance Filing of SCE – Report on Second Workshop of Phase IV, Direct Participation, Held January 19-21, 2011, filed on February 1, 2011.

proposed Rule 24 can be refined and adopted.[53] We also take this opportunity to confirm any prior Commission determinations that may require clarification. We discuss these clarifications and policy issues and determinations within the appropriate section of the proposed Rule. Parties provided comments on other aspects of the proposed Rule that we do not address in this decision. However, as part of this decision, we discuss future workshop(s) to finalize Rule 24 to address the technical and administrative aspects of the Rule.

4.2.2. Applicability

In reviewing comments, we must consider the following policy issues that are within the category of Applicability: the definition of DR Service as it applies to Rule 24, what entities are subject to Rule 24, and whether customers may enroll simultaneously in multiple programs served by different DR providers.

4.2.2.1. Definition of DR Service

In Section A.1(c) of draft Rule 24, Commission staff proposed the following definition of DR Service:

> *Unless otherwise stated, all references to demand response (DR) service shall refer to the DR activities associated with a DR provider's direct participation in the CAISO wholesale DR products where a retail customer enrolled in a DR service reduces its electric demand in accordance with the market awards and dispatch instruction issued by the CAISO. The CAISO's wholesale market DR products include Proxy Demand Resource (PDR) and the Reliability Demand Response Product (RDRP).*

[53] Our purpose in this decision, however, is not to refine Rule 24 and thus, we will not address all issues discussed in comments to the proposed Rule 24.

The CAISO recommends that the definition of DR Service be inclusive and not limiting, as suggested by the Utilities, but also not refer to specific CAISO products.[54] In order to allow for growth and change in the industry, we agree that DR Service should be defined in a generic, all-inclusive manner. Because the purpose of this proceeding is to encourage direct participation in the CAISO market by third parties as well as customers—either through third-party entities or on their own, we find that the Utilities' definition of "customers enrolled and participating in a DR [provided] program"[55] would not allow for individual customers to participate in programs independent of a DR provider.

Therefore, we adopt the following definition of DR Service:

> *DR activities associated with a DR provider's or a customer's direct participation in the CAISO wholesale energy market where a retail customer either on its own or enrolled in a DR service changes its energy demand in accordance with the market awards and dispatch instructions established by the CAISO.*

4.2.2.2. Entities and Services Subject to Rule 24

Sections A.2 and A.3 of proposed Rule 24 established a list of entities and services subject to the Rule and those exempt from the Rule. According to the proposed Rule, the following entities are subject to Rule 24:

- Utilities acting as a DR provider, LSE, Utility Distribution Company, Meter Data Management Agent or Meter Service Provider;

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[54] Reply Comments of the CAISO on the Proposed DRAFT Rule 24 for Direct Participation Demand Response, October 7, 2011 at 1-2.

[55] Opening Comments on Proposed Demand Response Rules of SCE, PG&E, and SDG&E, September 23, 2011, Attachment A at 2.

- Utility-affiliates acting as DR providers;
- Non-Utility DR providers serving bundled customers; and
- Bundled Customers acting as a DR provider for its own load.

The following entities are exempt from Rule 24:

- Non-Utility DR providers serving Direct Access and Community Choice Aggregation customers;
- Direct Access or Community Choice Aggregation customers acting as a DR provider for its own load; and
- Energy Service Providers and Community Choice Aggregators acting as an LSE for Direct Access or Community Choice Aggregation service customers.

Overall, all parties agree that the proposed rule properly defines the entities to which the Rule apply. Furthermore, we note that D.10-12-060 provides that the interaction between DR providers and customers may affect the safety, reliability and maintenance of utility services received by end use customers, similar to those involving Energy Service Providers. Such interactions are relevant in the context of our broad statutory authority under Pub. Util. Code §§ 761, 768, and 770, to ensure the provision of safe and reliable practices that impact public utility service.[56] Hence, we affirm the entities listed above as those subject to Rule 24 and those exempt.

[56] D.10-12-060 at 10.

Also of concern to this decision are the requirements for non-Utility DR providers. The Joint Parties 2011,[57] NAPP, and DRSG all agree that the requirements for non-Utility DR providers to register with the Commission are unnecessary and burdensome.

Specifically, the Joint Parties 2011 argue that the Commission has only authorized the registration of non-Utility DR providers serving residential and small commercial customers and, therefore, the registration requirements for other non-Utility DR providers should be eliminated.[58] NAPP agrees with the Joint Parties 2011 that the Commission should not require registration of non-Utility DR providers serving medium and large commercial and industrial customers as it is unnecessary and onerous.[59] DRSG further argues that the Commission already has existing provisions to prohibit DR providers from participating and expresses concern that the intent of the registration requirements "may be to allow the Commission to prohibit certain DR [providers] from participating in the wholesale market with retail customers."[60]

DRA disagrees, contending that "registration should be a global requirement," and calls on the Commission to reject the argument that registration with CAISO is sufficient.[61] DRA explains that eliminating registration for a certain class of providers could create an administrative

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[57] The Joint Parties 2011 comprise EnerNOC, Inc., Energy Connect, Inc., AReM and DACC.

[58] Comments of Joint Parties 2011 on the Proposed DR Rules, September 23, 2011 at 5-8.

[59] Comments of NAPP on Proposed DR Rules, September 23, 2011 at 2-3.

[60] DRSG Comments on Proposed DR Rules, September 23, 2011 at 3.

[61] Reply Comments of the DRA in Response to ALJ Ruling Soliciting Comments on Proposed DR Rules, October 7, 2011 at 10.

loophole for providing a formal process to remove an individual provider from that class of providers.

D.10-06-002, as modified by D.10-12-060, clearly provides that the Commission's regulation of DR providers is reasonable and lawful.[62] While the Joint Parties 2011 argue that the Commission's intention was to limit such jurisdiction to those providers serving residential and small commercial bundled customers, we note that D.10-06-002 limited consumer protections regulations to those DR providers serving residential and small commercial bundled customers, but the registration of DR providers was not limited.

The Commission has established a policy to require registration of all entities we regulate, regardless of our degree of regulatory authority. For example, D.94-10-031 requires Commercial Mobile Radiotelephone Services (wireless industry) to register with the Commission, even though we do not regulate several aspects of the wireless industry. On a more directly-related comparison, the Commission requires registration of Energy Service Providers despite no regulatory authority over these entities' rates or terms and conditions of service.[63] Furthermore, while the Joint Parties 2011 and others contend that registration with the Commission is onerous, no party provided any facts to verify the onerous burden. We therefore find it reasonable to require all DR providers to register with the Commission.

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[62] D.10-12-060 at 4.

[63] Pub. Util. Code § 394(b).

We recognize, however, that non-Utility DR providers serving medium and large commercial and industrial bundled customers have contractual obligations with these customers and that, pursuant to California's civil and business codes, these customers have existing legal protection from fraudulent or unscrupulous DR providers through statutory mandates.[64] Thus, while we direct that all non-Utility DR providers register with the Commission, we clarify that we will take a light touch approach to the regulation of non-Utility DR providers serving medium and large commercial and industrial bundled customers. We confirm that non-Utility DR providers serving medium and large commercial and industrial bundled customers are not required to provide the performance bond as discussed in Section 4.2.4.2 of this decision. Other exceptions for this class of DR providers are discussed throughout this decision.

Throughout proposed Rule 24, we use the term, "small commercial customers." In comments to this decision, several parties requested the Commission to define this term. DACC/AReM requests that the Commission use the phrase, "small commercial customers that are unaffiliated with large customer accounts."[65] While DACC/AReM does not offer a definition of the phrase, it requests that the term be defined as determined in R.07-05-025. SCE suggests that, pursuant to Pub. Util. Code Section 331(h), the Commission use the term, "small business customer," and define it as a customer that has a

[64] Comments of Joint Parties 2011 on the Proposed DR Rules, September 23, 2011 at 7.

[65] Comments of DACC/AReM on Proposed Decision, November 14, 2012 at 12.

maximum peak demand of less than 20 kilowatt.[66] In reply comments, PG&E request that the Commission allow each utility to adopt its own definition that is most appropriate for that utility's system.[67] While it does not oppose DACC/AReM's recommendation to use the phrase, "small commercial customers that are unaffiliated with large customer accounts," PG&E considers the term "unaffiliated" to be vague for the purposes of Rule 24. In its reply, DACC/AReM opposes SCE's recommendation, stating that it fails to address small commercial accounts affiliated with larger customer accounts.

It is important that the Commission be consistent in defining this term considering that many policies adopted here make the distinction between small commercial customers and medium and large commercial customers. Thus, for the purposes of Rule 24, we will adopt one definition for the term, "small commercial customer" that will apply to all utilities. As SCE notes in comments, Pub. Util. Code Section 331(h) defines small commercial customer as a customer that has a maximum peak demand of less than 20 kilowatts. We adopt this single definition of small commercial customer for purposes of Rule 24 and require that Rule 24 use the term "small commercial customer" instead of "small business customer."

4.2.2.3. Enrollment of a Single Customer with Multiple DR Providers

Also in Section A.2 of draft Rule 24, Commission Staff proposed that consistent with the CAISO tariff, a "customer is not allowed to

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[66] SCE's Opening Comments on Proposed Decision Adopting Policies for Demand Response Direct Participation, November 14, 2012 at 5-6.

[67] PG&E's Reply Comments on proposed Decision Adopting Policies for Demand Response Direct Participation, November 19, 2012 at 4.

simultaneously enroll load associated with the same service account number with more than one DR [provider]." Furthermore, Staff disallowed simultaneous enrollment in an event-based utility DR program and a non-utility DR program bidding the load into the CAISO market.

NAPP supports a multiple enrollment paradigm permitting customers to participate in a capacity based program with one DR provider and an energy based program with a different DR provider.[68] In reply comments, the Utilities oppose this proposal explaining that the CAISO PDR Tariff prohibits multiple DR providers from enrolling the same customer.[69]

We make the distinction between enrollment in DR programs where the loads are bid into the CAISO markets (the subject matter discussed here) and participation in the Utilities' retail DR programs where we allow dual participation in an energy program and a capacity based program. In D.10-06-002, the Commission stated that we would not reconsider the multiple enrollment rules for direct participation programs in the CAISO markets until there has been experience with single PDR participation.[70] Because we have gained no experience since the issuance of that decision, we find no reason to revise the policy at this time.

Thus, consistent with the CAISO tariff, we prohibit DR providers from enrolling a customer who is already enrolled with another DR provider.

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[68] Comments of NAPP on Proposed DR Rules, September 23, 2011 at 7.

[69] Reply Comments on Proposed DR Rules of SCE, PG&E, and SDG&E, October 7, 2011 at 4.

[70] Reply Comments on Proposed DR Rules of SCE, PG&E, and SDG&E, October 7, 2011 at 13-14 quoting D.10-06-002 at 13 and Finding of Fact 2.

Additionally, we prohibit the enrollment of a customer in a DR provider service where the load is bid into the CAISO energy market if that customer is already enrolled in a Utility event-based DR program.

4.2.3. General Terms

We must consider the following issues within the category of General Terms: the process for enrolling customers electing DR services, the flow control of data and the liabilities regarding such control, the registration forms for DR providers enrolling bundled service customers, the process for the resolution of disputes regarding rejected customer enrollments and the requirement for formal notifications to DR customers.

4.2.3.1. Customer DR Enrollment Process

In Section B.2(e) of the proposed Rule 24, the process to enroll a customer in a DR Provider program begins with a Customer Information Service Request sent to one of the Utilities by the DR provider. The Utility is then required to provide customer data to the DR provider. (We refer to this as the Customer Process.) In opening comments, the Utilities convey concern that the process for enrolling customers in a DR program should utilize the DR Service Request process (DR Process) as recommended by the Utilities in their May 2, 2011 proposal. The Utilities explain that their proposed DR Process is based upon the process "firmly established" and well utilized in the Direct Access market.[71] Arguing that the DR Process better protects customers, the Utilities provide several reasons, such as efficiency and expediency, for explaining why the Commission should select the DR Process over the Customer

[71] Opening Comments on Proposed DR Rules of Utilities, September 23, 2011 at 6.

Process.[72] Furthermore, the Utilities contend that the Customer Process is of limited value because it was developed for the express purpose of a one-time release of customer data.[73] DRA agrees with the Utilities, pointing out that not only is the DR Process more efficient for verification purposes but it is "also commercially reasonable because it is based on a well-established process."[74]

In reply comments, the Joint Parties 2011 argue that the DR Process is a "shadow process" and is unnecessary because it is duplicative of the information submitted to the CAISO. Calling the Utilities' proposal a barrier to DR participation in the CAISO market, the Joint Parties 2011 contend that the DR Process could lead to "potential abuses in the form of an 'administrative veto' that could block DR participant access to the CAISO market."[75] The Joint Parties 2011, instead, recommend that the use of an expanded version of the Customer Process provides a more efficient and expedient process.

One of the goals of Phase IV of this proceeding is to identify barriers to direct bid-in to the CAISO market. We find that the DR Process, as proposed, could lead to competitive barriers in that it provides the Utilities a preview of customers being enrolled by DR providers. The key difference between the Customer Process and the DR Process is that the Customer Process does not require the Utilities' acceptance prior to a DR provider enrolling a customer into a third-party DR Service upon receiving the customer's

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[72] Opening Comments on Proposed DR Rules of Utilities, September 23, 2011 at 5-6.

[73] Opening Comments on Proposed DR Rules of Utilities, September 23, 2011 at 6.

[74] Reply Comments of DRA in Response to ALJ Ruling Soliciting Comments on Proposed DR Rules, October 7, 2011 at 3.

[75] Reply Comments of Joint Parties 2011 on the Proposed DR Rules, October 7, 2011 at 2.

information, e.g., account number, sub-LAP, other DR enrollment data, meter data, etc. While this proposed process is based on the well-established Direct Access Service Request process, it has not been created yet. Furthermore, the use of the DR Process requires the continued simultaneous use of the Customer Process. Thus, we see the simplicity in expanding the already established Customer Process. The Utilities contend that expanding the Customer Process will take more time than creating the new DR Process. However, they have not provided any facts to verify this. We find the expansion of the Customer Process to be a simpler, stream lined-approach as opposed to the simultaneous use of both the current Customer Process and a new, yet to be created, DR Process.

We thus adopt the use of an expanded Customer Process for use in Electric Rule 24. The Utilities must work with the stakeholders during staff-led workshop(s) to define the additional fields necessary on the Customer Process form to ensure efficiency and effectiveness in this Process. We also discuss the Customer Process form as it relates to Privacy Issues in Section 4.2.4.2. later in this decision.

4.2.3.2. Flow Control of Data and Liabilities Regarding Control

In Section B.3 of the proposed Rule 24, the general obligations of the Utilities acting as the Meter Data Management Agent are presented. The proposed rule states that the Meter Data Management Agent is responsible for providing accurate and timely meter data to the DR provider in accordance with the applicable timelines and requirements set forth in the CAISO's tariff. The Rule explains that the Meter Data Management Agent is liable for payment or reimbursement to the DR resource's Scheduling coordinator of any charges or penalties due to its non-compliance with such applicable CAISO rules.

There are two points of contention regarding this aspect of Rule 24. First, the Joint Parties 2011 and DRSG argue that the DR provider, not the Meter Data Management Agent should control the flow of data. Second, the Utilities argue that the draft rule inequitably imposes penalties on the Utilities, acting as the Meter Data Management Agent, for failure to timely provide timely data.

In comments, the Joint Parties 2011 explain that they currently receive near, real-time data directly from the meter via the KYZ pulse device.[76] Further, Joint Parties 2011 contend that the Commission should allow DR providers to submit this data as preliminary settlement data to the CAISO, after which DR providers and Meter Data Management Agents can reconcile differences in performance and submit true-ups.[77]

Neither the Utilities nor the CAISO argue against the use of KYZ pulse data. The Utilities state that a DR provider may use whatever data sources it believes to be a reasonable estimate of the settlement quality meter data for the initial settlement with the CAISO, so long as the Meter Data Management Agent is the sole provider of actual settlement quality meter data for use in financial settlements.[78] In Opening Comments, CAISO defers to the Commission regarding the selection of metering technologies or the definition of revenue quality meter data to be used in the direct participation rule.[79]

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[76] KYX pulse devices are connected to utility meters and installed by the utility. (See Comments of Joint Parties on the Proposed DR Rules, September 23, 2011 at 14.)

[77] Comments of Joint Parties 2011 on the Proposed DR Rules, September 23, 2011 at 14.

[78] Reply Comments on Proposed DR Rules of Utilities, October 7, 2011 at 12.

[79] Comments of the CAISO on the Proposed Draft Rule 24 for Direct Participation DR at 5.

Our general policy is to create streamlined processes for Commission programs. Thus, we find it reasonable to allow the use of KYZ pulse data for submission to the CAISO as estimated settlement quality meter data, especially since this puts the control of the data in the hands of the DR provider. We further clarify that we do not limit the types of data deemed reasonable for preliminary settlement purposes. There may be other forms of data either available now or in the future that are similarly suitable.

In comments to this decision, the CAISO clarified that the estimated settlement quality meter data must be confirmed by the actual Settlement Quality Meter Data for the final settlement. Furthermore, CAISO also clarified that its tariff requires that the DR provider's scheduling coordinator, not the Meter Data Management Agent is the entity responsible for providing accurate and timely estimated settlement quality meter data to the CAISO.[80] The Utilities, in the role of Meter Data Management Agents, are no longer liable for payment of any charges or penalties due to non-compliance with applicable CAISO rules, as it relates to the submission of estimated settlement quality meter data. However, Meter Data Management Agents are responsible, and therefore liable, for providing the actual Settlement Quality Meter Data to the DR provider's scheduling coordinator to facilitate final meter data submission in accordance with the CAISO tariff. Reasonable timelines to ensure meter data processing occurs in accordance with the CAISO tariff are necessary to prevent sanctions levied on the DR provider's scheduling coordinator due to late meter

[80] Opening Comments of the CAISO on the Proposed Decision Adopting Policies for DR Direct Participation, November 14, 2012 at 6-7.

data submittals. Stakeholders should refine the timing and management for this portion of Rule 24 through the prescribed workshop(s).

4.2.3.3. DR Registration Forms

The Joint Parties 2011 argue that the registration process, as described in Section B.5(b) of the proposed Rule 24 is onerous and burdensome. The Joint Parties 2011 did not provide any facts to confirm this burden. As we previously noted, it is Commission policy to require all non-Utility DR providers serving bundled customers to register with the Commission. However, our intention is to provide a simple but efficient registration process.

Several parties conveyed that clarification is needed to decipher between the referenced "short" form and "long" registration forms. In order to create a simple registration process without potential confusion with two forms, we direct the Utilities and Staff to collaborate with stakeholders in workshop(s) to develop a single registration form with a common section for the registration of all non-Utility DR providers and a separate section applicable to non-Utility DR providers serving residential and small commercial bundled customers. The common section should be limited to only the most vital information needed by the Commission, such as that required by Energy Service Providers.[81] In addition, the workshop participants should collaborate to finalize the remainder of the registration form for the non-Utility DR providers serving residential and small commercial customers. Workshop participants should begin the process using the registration form in Attachment B of the proposed Draft Rule 24.

[81] See the list of requirements in Pub. Util. Code § 394(b)(1-10).

4.2.3.4. Dispute Resolution Regarding Customer Enrollments

The proposed Rule 24 established a process in the event of a dispute regarding the rejection of a customer enrollment for registration as a DR resource. The proposed process (see Staff Proposed Rule 24 at Section B.2.f, Attachment B) stated that if a non-Utility DR provider disputes the basis for a recommended rejection of a customer enrollment (registration into the CAISO market) by a Utility acting as the LSE or the Utility Distribution Company, the Non-Utility DR provider may use the Commission's Expedited Complaint Procedure[82] as described in Commission Rules of Practice and Procedure Rule 4.5.[83]

Most parties agree that a clear process must be in place to resolve disputes regarding customer enrollments (registrations in the CAISO market). However, parties disagree with the specifics of the process. The Utilities recommended a process where the customer or current DR provider was given ten days to object to an enrollment of a customer into a DR program whereupon the Utility Distribution Company would halt the enrollment process and wait for resolution.[84] The Joint Parties 2011 offered a process whereby the Energy Division would resolve, within 10 days, incidences when the DR provider

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[82] The Expedited Complaint Process is a procedure for quickly handling formal complaint cases. This process ensures a hearing, without a court reporter, within 30 days after an answer to a complaint is filed. Only the complainant and the answer are heard; the parties represent themselves. An ALJ prepares a Draft Decision, and the final decision is made by the full Commission.

[83] Rule 4.5 is available at http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF

[84] Utilities Proposed Direct Participation Rule, May 2, 2011.

disputes the basis for a recommended rejection of a customer enrollment (DR resource registration) by a LSE or the Utility Distribution Company.[85] The Joint Parties argue that the Utilities' process is time-consuming.[86]

While we recognize the need for expediency in resolving these matters, it is not the role of the Utilities or Energy Division staff to determine disputes. As such, we adopt the Commission's current formal Complaint Process where the Commission would resolve disputes regarding enrollment rejections. The formal Complaint Process provides the options of the Expedited Complaint Procedure as well as Alternative Dispute Resolution. While the Utilities argue that this proposal does not provide for disputes between two competing non-Utility DR Provider, we disagree. As we previously noted, D.10-06-002 clearly provides that the Commission's regulation of DR providers, including non-Utility DR providers, is reasonable and lawful.[87] Thus, the Commission's current Complaint Process is available to resolve disputes between two non-Utility DR providers.

We acknowledge the concern regarding expediency in this process. Therefore, we adopt this process on an interim basis, and direct Commission Staff to collect the relevant data regarding this matter during the first year of the program and provide a report to the Commission and the stakeholders within 18 months following implementation of the direct participation rule. The report should contain an analysis, the impacts on

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[85] Joint Parties' 2011 Proposed Direct Participation Rule, May 2, 2011.

[86] Joint Parties' 2011 Proposed Direct Participation Rule, May 2, 2011 at 10.

[87] D.10-12-060 at 4.

DR providers and customers, and a recommendation to either continue the process, as is, or revisit.

4.2.3.5. Formal Notification for Residential and Small Commercial Customers

Section B.12 of the Rule requires that DR providers intending to enroll residential and small commercial customers in DR services must transmit a Commission staff-approved standard form letter to each customer explaining the DR provider's terms and conditions of participating in its DR program. DRA requests, with the Utilities support,[88] to be involved in the development of this notification letter.[89]

We consider the notification letter to be a valuable method to educate and protect residential and small commercial bundled customers participating in DR programs. Thus, we find it reasonable to require that this standard form letter be developed by all parties to ensure that the terms and conditions are presented in a clear and unambiguous way to customers, and that the DR provider presents the letter to the customer prior to registering the customer's account with the CAISO. DR providers shall work with Commission staff to develop the initial draft notification letter. Once a draft is developed, Commission staff should provide parties on the service list the opportunity to comment on the letter, prior to it being finalized.

We clarify that Commission staff review and approval of the standard notification letter is limited to ensuring whether the terms and

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[88] Reply Comments of Proposed DR Rules of Utilities, October 7, 2011 at 16.

[89] Comments of DRA in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules at 5-6.

conditions are presented clearly and unambiguously. Staff will not evaluate any other aspects of the terms and conditions.

Non-Utility DR providers serving residential and small commercial bundled customers shall include a copy of the Commission staff-approved notification letter upon commencing the Commission's registration process. We note that we expect all DR providers to have approximately the same customer notification form letter except where differences occur in a provider's terms and conditions.

In comments to this decision, SCE requested that the standard notification letter be approved by the Commission simultaneously with Rule 24.[90] As discussed above, the differences in the standard notification letter are limited to a DR provider's specific terms and conditions. Such a standard letter can be developed within the time schedule as presented in this decision. Therefore, the final customer notification form letter as developed by all parties should be included for Commission approval through the Tier Three Advice letter submitted by the Utilities no later than ninety days after the completion of the Commission staff-led workshop(s).

4.2.4. Access to Customer Data

We consider the following issues within the category of Access to Customer Data: the final privacy rules, whether to allow electronic authorization signatures from customers, and whether notification to the Utility by the DR provider is required once a customer leaves a DR program.

[90] SCE Opening Comments on Proposed Decision Adopting Policies for DR Direct Participation, November 14, 2012 at 6.

4.2.4.1. Final Privacy Rules

At the beginning of Section C. Access to Customer Data, the proposed Rule 24 explained that final provisions would be determined based on anticipated Commission decision(s) in the Smart Grid R.08-12-009 adopting customer privacy standards and protections. In its opening comments, DRA referenced this disclaimer but stated that the Commission had already adopted privacy rules in R.08-12-009 which address third party access of customer information from either the customer or the Utilities.[91] DRA recommends that the Commission adopt the following language in proposed Rule 24 to appropriately align the Rule with the current privacy rules:

> The requestor must have written customer authorization using PG&E/SCE/SDG&E Form 9-1095, Authorization to Receive Customer Information or Act Upon a Customer's Behalf to release such information to the inquiring party only (commonly referred to as the Customer Information Service Request). At the customer's request, this authorization may also indicate whether the customer information may be released to other parties as specified by the customer. The DR provider agrees to abide by Public Utilities Code Section 8380, the Commission's Rules Regarding Privacy and Security Protections for Energy Usage Data and any other privacy and security rules established by the Commission.[92]

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[91] Comments of DRA in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules at 6 referencing D.11-07-056 which adopted rules to protect the privacy and security of the electricity usage data of the customers of PG&E, SCE, and SDG&E.

[92] Comments of DRA in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules at 6-7.

In addition, DRA recommended that the Commission clarify that direct participation is not a "primary purpose" under the privacy rules since a third-party aggregator intending to bid directly into the CAISO markets is not "operated by, or on behalf of and under contract with" one of the Utilities, a gas corporation, Energy Service Provider or a Community Choice Aggregator.[93]

No party commented in response to the change in language suggested by DRA. However, the Joint Parties 2011 objected to DRA's recommendation that the programs discussed here are not for a "primary purpose." In reply comments, Joint Parties 2011 argue that DRA misinterprets the primary purpose language in the privacy rules, as it applies to DR providers.

First, we agree with DRA's recommended change to the language in Section C.1. a. We find that the additional reference to the Commission's Rules Regarding Privacy and Security Protections for Energy Usage Data is appropriate. Given that the Commission has extended these protections to all customers of Community Choice Aggregators and residential and small business customers of Energy Service Providers through D.12-08-045, we find it equally appropriate that these protections apply to customers of the direct participation program.

We also agree with DRA's interpretation that DR providers enrolling customers in DR for the purposes of bidding into the CAISO market do not fall under the definition of primary purposes.

In comments to this decision, PG&E explained that "in D.12-08-045, the Commission determined its privacy rules would be applied

[93] Comments of DRA in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules at 8.

directly to third party Community Choice Aggregators and certain Energy Service Providers *instead of requiring the utilities themselves to apply and enforce the rules against the* Community Choice Aggregators and Energy Service Providers *as "primary purposes"* under the privacy rules directly applicable to the utilities under prior D.11-07-056."[94] PG&E further explained that, if third parties were considered agents of the Utilities for "primary purpose" programs under the Commission's privacy rules, then the privacy rules would require the Utilities to directly oversee and ensure compliance with the privacy rules against the third parties themselves, even though the Direct Participation programs conducted by the third parties are *not* conducted as utility programs, but are conducted as independent services that the third parties provide directly to utility customers.

We, therefore, approve the adoption of the revised language recommended by DRA for the proposed direct participation rule, Section C(1)(a):

> The requestor must have written customer authorization using PG&E/SCE/SDG&E Form 79-1095, Authorization to Receive Customer Information or Act Upon a Customer's Behalf to release such information to the inquiring party only (commonly referred to as the Customer Information Service Request). At the customer's request, this authorization may also indicate whether the customer information may be released to other parties as specified by the customer. The DR provider agrees to abide by Public Utilities Code Section 8380, the Commission's Rules Regarding Privacy and Security Protections for Energy Usage

[94] PG&E Opening Comments on Proposed Decision Adopting Policies for DR Direct Participation, November 14, 2012 at 4-6.

> Data and any other privacy and security rules established by the Commission.

We also confirm that DR provider services for the purposes of bidding into the CAISO market fall under the definition of "secondary purposes" because the third party is not providing a Utility program.

4.2.4.2. Electronic versus "Wet" Customer Authorization Signatures

Section C of the proposed Rule 24 provides instructions regarding a customer's authorization to release and share end-user information. In opening comments, both the Joint Parties 2011 and DRSG request that the Commission permit the acceptance of electronic signatures in order to simplify and expedite customer enrollment.[95] Both parties point to California Civil Code Section 1633.1, which considers electronic signatures to be the same as written signatures.[96] The proposed Rule 24 is silent on this issue.

DRA and the Utilities argue that the Commission should not allow the use of electronic signatures. Claiming they would need to "significantly revise their IT infrastructures in order to accept electronic signatures in a secure fashion consistent with the Privacy Decision's requirements," the Utilities contend that their current practices comply with D.11-07-056, the Commission's privacy rules.[97] D.11-07-056 requires the Utilities to obtain their customer's written authorization prior to providing that

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[95] DRSG Comments on Proposed DR Rules, September 23, 2011 at 4 and Comments of Joint Parties 2011 on the Proposed DR Rules, September 23, 2011 at 9.

[96] DRSG Comments on Proposed DR Rules, September 23, 2011 at 4 and Comments of Joint Parties 2011 on the Proposed DR Rules, September 23, 2011 at 9.

[97] Reply Comments on Proposed DR Rules of Utilities, October 7, 2011 at 8.

customer's data to a third party. DRA argues that a decision regarding this issue should be made in the Smart Grid rulemaking where this issue has been discussed and debated.[98]

In our review of California Civil Code Section 1633.1, the Uniform Electronic Transactions Act, there are several relevant sections to discuss in addressing this issue. As argued by the DRSG, Section 1645.7(d) states that "if a law requires a signature, an electronic signature satisfies the law." However, as noted by the Utilities,[99] Section 1633.5(b) states that the Act is applicable "only to a transaction between parties each of which has agreed to conduct the transaction by electronic means." Furthermore, Section 1633.17 states that no state agency, board, or commission may require, prohibit, or regulate the use of an electronic signature in a transaction in which the agency, board, or commission is not a party unless a law other than this title expressly authorizes the requirement, prohibition, or regulation.

We conclude that the Uniform Electronic Transaction Act does not apply to the Rule unless, and until, a DR provider and a Utility agree to conduct the transaction by electronic means. We anticipate, however, that such an agreement could be made within the Service Agreement. We further conclude that the Act does not allow the Commission to require, prohibit, or regulate the use of an electronic signature because the Commission is not a party in these transactions.

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[98] Reply Comments of DRA in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules at 9.

[99] Reply Comments on Proposed DR Rules of Utilities, October 7, 2011 at 8.

In both opening and reply comments, the Utilities explain that D.11-07-056 requires the Utilities to submit an advice letter revising the Customer Information Service Request form[100] to be consistent with the adopted privacy requirements. The Utilities request that the Commission only litigate changes to the form within the confines of the R.08-12-009. We find it reasonable that, for efficiency sake, we address any changes to the Customer Information Service Request form within the R.08-12-009 proceeding but only as it relates to privacy issues. On October 1, 2012, parties to this proceeding received notice of an October 11, 2012 workshop that, among other issues, discusses the update to the Customer Information Service Request form to be consistent with the privacy rules. Parties to this proceeding and any other stakeholders wanting to participate in the revisions of the Customer Information Service Request form as they relate to privacy issues should do so through the R.08-12-009 proceeding. The Utilities are required to submit an advice letter requesting Commission approval of the changes to Customer Information Service Request form pursuant to the October 11, 2012 workshop.[101] The changes made to the Customer Information Service Request form and adopted by the Commission through R.08-12-009 should then be incorporated into the direct participation process.

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[100] This form is used in the Customer Process discussed in Section 4.2.3.1.

[101] Resolution E-4535, adopted by the Commission on September 27, 2012, rejects the Tier 2 Advice Letters and proposed tariffs filed by the Utilities to implement the privacy and security rules adopted by D.11-07-056 and directs the Utilities to re-file these Advice Letters based on discussions held in a future workshop, as ordered by D.12-08-045.

4.2.4.3. Notification Requirements When a Customer Discontinues DR Service

As the Rule is currently written, there are no requirements regarding the steps to take when a customer decides to leave a DR program. The Utilities contend that "it is unclear how the [Utilities] will protect customer confidential information when providing access to customer data after the initial enrollment."[102] DRA, agreeing with the Utilities, explains that the current Customer Process provides three options for the release of customer account information[103] but does not provide for stopping the release of customer information.[104] DRA argues that the Utility does not know when a customer decides to discontinue DR service and therefore the Utility continues to release that customer's data without permission.

We are committed to ensuring the confidentiality of customer data. In order to preserve that confidentiality when customers decide to withdraw from a DR program, we conclude that there should be a process in place to inform the Utility to stop transmitting that data to the DR provider. We require the non-Utility DR providers to notify the Utilities to terminate the transmittal of customer usage data when a customer disenrolls from the DR

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[102] Opening Comments on Proposed DR Rules of the Utilities, September 23, 2011 at 6.

[103] The three options are 1) a one time request for information; 2) a one year authorization; or 3) for a period commencing form the data of execution of the Customer Information Service Request until withdrawn by the customer, or after a specified period of time, limited in duration for three years. The third option also terminates authorization if the DR provider is no longer eligible to participate in the CAISO market or with the Commission. (See Reply Comments of DRA in Response to the ALJ's Ruling Soliciting Comments on Proposed DR Rules, October 7, 2011 at 5.)

[104] Reply Comments of DRA in Response to the ALJ's Ruling Soliciting Comments on Proposed DR Rules, October 7, 2011 at 5.

provider's program. The notification should be provided by the DR provider through the previously described Customer Process, thus ensuring customer authorization. In addition, stakeholders should develop the technical aspects of terminating the KYZ pulse device in the event of a disenrollment.

We remind the Utilities that pursuant to D.11-07-056 and Pub. Util. Code § 8380, they are responsible for the protection of customer information and should only transmit metered data to third parties that have the proper customer permissions. Utilities should always ensure they have an efficient but effective system for ensuring compliance.

4.2.5. DR Service Establishment

We next consider the following issues within the category of DR Service Establishment: the development of a service agreement and Commission registration requirements.

4.2.5.1. Development of a Service Agreement

The Utilities claim that a service agreement between the DR providers and the Utilities is essential to establish the roles of the parties and to bind the non-Utility DR providers to the requirements of Rule 24 and, thus, urge the Commission to adopt the draft service agreement the Utilities proposed in their May 2, 2011 Rule 24 proposal.[105] Joint Parties 2011 state that a Service Agreement may be fashioned from the final adopted Rule 24 but the Joint Parties should be involved in its development.[106]

In reply comments, the Utilities agree that parties should comment on the Service Agreement but that it should be considered at the same

[105] Opening Comments on Proposed DR Rules of the Utilities, September 23, 2011 at 8.

[106] Comments of Joint Parties on the Proposed DR Rules, September 23, 2011 at 9.

time as the proposed Rule 24.[107] The Utilities further note that the service agreement must clearly obligate the non-Utility DR providers to comply with Rule 24, as modified when necessary by the Commission.

We first clarify that it is the Commission's DR provider registration approval process that obligates all DR providers to comply with the appropriate sections of Rule 24.[108] The Service Agreement is between a DR provider and the Utility and thus should be developed by both. We direct staff to include, as part of its workshop(s) on Rule 24, discussions to finalize the proposed service agreement.

In reviewing the draft service agreements proposed by the Utilities and the Joint Parties 2011 in their May 2, 2011 proposals, the two agreements look almost identical. Further, the Joint Parties 2011 state in the introduction to their proposal that Utilities and DR providers participated in calls to discuss the Service Agreement and progress was made toward reducing the issues.[109] Stakeholders should begin the process using the service agreement proposed by the Joint Parties 2011 in their May 2, 2011 proposal.

It is reasonable that the Commission consider the DR provider service agreement simultaneously with Rule 24. Stakeholders must work together to finalize a service agreement to be included with the proposed Rule 24

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[107] Reply Comments on Proposed DR Rules of the Utilities, October 7, 2011 at 9.

[108] We have concluded that non-Utility DR Providers serving medium and large commercial and industrial customers have limited Rule 24 requirements.

[109] Joint Parties' Proposed Direct Participation Rules, May 2, 2011 at 9 (referencing Appendices C and D).

submitted by a Tier Three advice letter no later than 90 days following the workshop(s).

4.2.5.2. Commission Registration Requirements

We have already confirmed that all non-Utility DR Providers serving bundled customers must register with the Commission, and only non-Utility DR providers serving residential and small commercial bundled service customers are required to provide a security deposit. However, there remains some ambiguity regarding this security deposit.

DRA contends that the requirement to "provide the Commission a security deposit or financial guarantee bond in the amount of $25,000 as specific in the registration form,"[110] is ambiguous. DRA explains that there is uncertainty as to whether the bond posted to the Commission should be in a similar manner as that discussed under the Credit Requirements.[111] DRA also argues that the monetary requirement is insufficient to mitigate the risk to residential and small commercial ratepayers.[112]

We confirm that, similar to our registration requirements for certificates of public convenience and necessity, the "security deposit or financial guarantee bond" should be in the form of a performance bond under the name of the Commission. While DRA argues that the requirement is insufficient to mitigate the risk to residential and small commercial ratepayers, DRA does not provide any support for its claim.

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[110] Proposed Rule 24 at Section B.7.

[111] Comments of the DRA in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules, September 23, 2011 at 10.

[112] Comments of the DRA in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules, September 23, 2011 at 10.

Ordinarily, the Commission requires such bonds for purposes of the collection of fines, penalties or restitution related to enforcement.[113] However, in the case of DR providers, we have not established any fines or penalties at this time. Furthermore, there is nothing in the record of this proceeding that would allow us to estimate a dollar amount for restitution. Therefore, we do not set an amount for the performance bond requirement. Rather, we require staff to work with the stakeholders to determine a formula to develop the bond amount. This formula should consider, as one of the factors, the contractual amount a DR provider is obligated to provide to customers. A final bond amount should be discussed during the workshop(s) to refine Rule 24.

4.2.6. Credit Requirements

In reviewing the credit requirements, we first ask what these requirements should represent. The Utilities state that adequate credit should ensure that 1) those providing services to the DR providers have an adequate security that they will be compensated for those services; 2) ratepayers are not harmed by any nonpayment owed to the LSE by the DR Provider due to financial settlements; and 3) payments to customers are secure.[114] The Joint Parties 2011 contend that in the absence of a financial settlement, it is unclear whether remittance due to the Utilities for service fees necessitates the posting of security.[115]

Earlier in this decision, we determined that financial settlements for direct participation bids above the NBT would not be necessary, and bids

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[113] See, for example, Pub. Util. Code § 1013(f).

[114] Reply Comments on Proposed DR Rules of Utilities, October 7, 2011 at 10.

[115] Comments of Joint Parties on Proposed DR Rules, September 23, 2011 at 12.

below the NBT would not be allowed, thus making financial settlements unnecessary. Because we have eliminated the need for a financial settlement, we are left with two potential reasons to require a credit deposit from DR providers: to ensure that 1) those providing services to DR providers will be compensated for those services and 2) payments to customers are secure. We clarify that payments to customers should not be an issue between the DR provider and the Utility. Should issues arise regarding payments to customers, these matters should be brought before the Commission through the appropriate complaint venues which shall be discussed below. Furthermore, restitution to customers is covered through the performance bond, required of non-Utility DR providers serving residential and small commercial customers. As we have previously stated, medium and large commercial and industrial customers are protected through contracts between the customer and the DR provider. Thus, the only reason to require credit deposits from DR providers is to ensure that those providing services to DR providers will be compensated for those services.

We now discuss whether there may be potential charges for services rendered as a result of DR direct participation activities. We then discuss establishing credit worthiness.

4.2.6.1. DR Direct Participation Charges

In reviewing the record of this proceeding, we focus our discussion on the three proposals for Rule 24: the May 2, 2011 proposal from the Utilities, the May 2, 2011 proposal from the Joint Parties 2011, and the August 19, 2011 proposal drafted by staff. We find that there are several occasions in all three proposals where the Utilities, acting as the Utility Distribution Company, the Meter Data Management Agent, or the Meter Service Provider, could incur costs as a result of providing services to a DR provider.

For example, in all three proposals, the Utilities acting as the Utility Distribution Company is expected to provide customer data to a DR provider.[116] While we do not know the costs for performing these services, there are actions taken by the Utilities for the DR providers and costs incurred. We will not finalize the details of the costs incurred as a result of these services in this proceeding. However, we conclude that the Utilities incur costs as a result of providing services to the DR providers.

We direct the Utilities to submit applications requesting review and approval of tariffs for the recovery of costs incurred as a result of providing services to DR providers. The tariff approval requests should be filed within 90 days following the adoption of Rule 24.

4.2.6.2. Establishing Credit Worthiness With the Utilities

We have previously determined that the Utilities will incur costs for services provided to DR providers. Thus DR providers will need to establish credit worthiness relative to these costs. Section G.2 of draft Rule 24 offers two options through which the DR providers could establish credit worthiness: 1) credit evaluation or 2) security deposits.

The proposed rules state that a credit evaluation requires a credit rating of Baa2 or higher from Moody, or BBB or higher from Standard and Poor or Fitch. If the DR provider chose to establish credit worthiness through a security deposit, the proposed rule requires them to post with the Utility an

[116] Joint Parties' Proposed Direct Participation Rules, May 2, 2011, Appendix A at Sheet 4; Joint Compliance Filing of the Utilities on Proposed Rules in Phase IV, Direct Participation, Appendix A at Sheet 4; and Appendix A at 6.

amount equal to twice the estimated maximum monthly revenues from the CAISO for participating in one month of DR activities.

Parties' opinions on the matter are divided. The Joint Parties 2011, NAPP, and DRSG consider the credit requirements unnecessary, onerous, and unduly burdensome. Joint Parties 2011 surmise that staff based the credit requirements on the Utilities' proposal which was based on the Rules for Energy Service Providers (Rule 22). However, Joint Parties 2011 contend that the proposed Rules are inconsistent with Rule 22, and in most cases are much more restrictive.[117] NAPP states that the onerous credit requirements provide a competitive advantage to the Utilities and represent a barrier to entry.[118] Conversely, the Utilities agree with the proposed requirements and recommend approval by the Commission. DRA also agrees, saying that credit requirements are a necessary component to Rule 24, but questions whether the financial instruments are adequate to demonstrate the DR provider's credit worthiness.[119]

We now turn to a discussion of the aforementioned Rules for Energy Service Providers (Rule 22) which is referenced by both the Joint Parties 2011 and the Utilities as an example for developing credit worthiness rules. Joint Parties 2011 explain that while Section P.2 of Rule 22 describes the options for credit worthiness, the requirement only applies to the Utility charges billed to the Energy Service Provider and the amount of the security deposit is limited to

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[117] Comments of Joint Parties on the Proposed DR Rules, September 23, 2011 at 12.

[118] Comments of NAPP on Proposed DR Rules, September 23, 2011 at 5.

[119] Comments of the DRA in Response to ALJ's Ruling Soliciting Comments on Proposed DR Rules, September 23, 2011 at 11.

"twice the estimated maximum monthly bill for the Utility charges.[120] The Utilities contend that the credit requirements provided in Rule 22 do not reflect current credit standards and convey that Rule 22 credit requirements are being revised in R.07-05-025.[121]

We consider Rule 22 to be an appropriate comparison to determine credit requirements for the proposed Rule 24, but we recognize that the final credit requirements have not been finalized in proceeding R.07-05-025. Once the requirements for determining a credit evaluation have been finalized, those same requirements should be adopted for the purposes of Rule 24. Parties wanting to participate in the development of those requirements should do so through the R.07-05-025 proceeding.

For now, we confirm the requirements for the second option, the security deposit. The current proposed requirement of twice the monthly maximum revenues from the CAISO is not relevant to the payments for services required in this program. We find it unreasonable. Because the tasks provided by the Utilities in the direct participation program are similar to those tasks performed by the Utilities in the Energy Service Providers Rules, i.e., data transfers, we find it reasonable to require the same security deposit level as that provided in the Energy Service Providers Rule.

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[120] Comments of Joint Parties on Proposed DR Rules, September 23, 2011 at 11.

[121] Reply Comments on Proposed DR Rules of Utilities, October 7, 2011 at 10.

We direct that, until the options for credit evaluations have been finalized in R.07-05-025, DR providers should establish a security deposit limited to twice the estimated maximum monthly bill for the aforementioned Utility charges. Upon resolution of the credit evaluation requirements in R.07-05-025, the same requirements will be incorporated into the final Rule 24, thus offering DR providers two options to establish credit worthiness.

4.2.7. Complaint Resolution

Section I of proposed Rule 24 provides instructions for the process to use in resolving disputes (including disputes related to enrollment which we have already addressed) for three different relationships: between a Utility and a non-Utility DR provider; between a customer and a DR provider; and between a bundled services customer and non-Utility provider. For disputes between a Utility and a non-Utility DR provider, the rule requires the use of the Expedited Complaint Process, where an ALJ oversees and resolves the complaint. For disputes between a customer and a DR provider, the Rule currently requires the use of an informal complaint and then a formal complaint. We note here that the Rule does not explain that formal complaints include the options of Expedited Complaint Procedures and Alternative Dispute Resolution.[122] For disputes between bundled services and non-Utility DR providers, the Rule currently recommends filing a complaint at the appropriate business court. In addition, the Rule suggests that bundled service customers may also file an informal complaint with the Commission.

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[122] The Alternative Dispute Resolution (ADR) process is a free service offered by the Commission when a formal complaint is filed. Parties requesting ADR select a neutral ALJ who works with the parties through one or more individual or group meetings to develop and, hopefully, agree upon a settlement.

Parties have differing views on the level of Commission intervention that can or should occur regarding disputes. DRA and the Utilities both contend that the procedures provided by the proposed Rule are insufficient for resolving disputes. DRA recommends that the Commission develop language for the Complaint and Dispute Resolution section similar to that provided in Section 1.2 (regarding enrollment disputes.)[123] While the Utilities agree that the Rules are insufficient, the emphasis is on enrollment disputes between two non-Utility DR Providers. Conversely, Joint Parties 2011 "see no justification for modifying the Commission's current complaint provisions or staff's proposed Rule 24."[124] Further, the Joint Parties 2011 conclude that "the Commission has well-developed procedures in place to address and resolve those disputes. No additional DR [provider] – specific dispute procedures are warranted."[125]

We have previously determined that medium and large commercial and industrial customers being served by non-Utility DR providers have contractual protections in place pursuant to California civil and business codes. Therefore, at this time, we do not find a need to extend our jurisdiction to consumer protections regarding this class of customers. In that same vein, we have found that our jurisdiction includes protecting residential and small commercial bundled customers receiving services from non-Utility DR providers. Thus, we will provide them the same protections as those given to

[123] Comments of DRA in Response to the ALJ's Ruling Soliciting Comments on proposed DR Rules, September 23, 2011 at 15.

[124] Reply Comments of Joint Parties on the Proposed Demand Response Rules, October 2011 at 16.

[125] Reply Comments of Joint Parties on the Proposed Demand Response Rules, October 7, 2011 at 16.

customers of Utility DR providers. However, it would not be efficient or a good use of Commission resources to develop and implement a separate set of procedures to handle DR disputes. The Commission's current complaint resolution processes are appropriate to resolve disputes for all three relationships listed above.

4.2.8. Additional Consumer Protections

The Utilities request that prior to adoption of a direct participation rule, a policy decision be adopted that includes rules for consumer protection.[126] The Utilities contend that the draft rule, as proposed by staff, "weakens both the procedures and consumer protections" provided by the Utilities' proposal.[127] The Utilities recommend several additional consumer protections that we address individually below.

The Utilities recommend the dual use of the Customer Information Service Request and the proposed Demand Response Service Request in order to protect customers. Earlier in this decision, we determined that an expanded Customer Information Service Request provides customer protections, but in a more simplified manner. The Utilities also express concern regarding the protection of customer privacy, in that the draft rule did include a requirement to inform the Utility to stop sending data when a customer left a DR program. We have addressed these issues above and require that the Rule incorporates this protection.

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[126] Opening Comments on Proposed DR Rules of the Utilities, September 23, 2011 at 3.

[127] Opening Comments on Proposed DR Rules of the Utilities, September 23, 2011 at 4.

The Utilities argue that the proposed rule fails to incorporate safeguards to protect against slamming.[128] The Joint Parties 2011 contend that such protections are unnecessary because DR services and customer obligations are different from those where slamming is an issue such as electricity services. The Joint Parties 2011 explain that "unlike a customer's obligation to pay its supplier for electricity service, customers enrolled in DR programs are paid by the DR [provider]."[129]

We conclude that there is no known incentive for a DR provider to "slam" a customer and therefore, we find it unnecessary at this time to require the development of a rule to protect against slamming.

5. Finalizing the Proposed Direct Participation Rule

Stakeholders have worked with Commission staff to develop the proposed Electric Rule 24, Direct Participation. While this decision addresses many policies related to the rules, there remain several unresolved technical and administrative questions, including the issue of enforcement.

We recognize that an enforcement mechanism is necessary to ensure that all required entities are complying with Rule 24. We also recognize that enforcement mechanisms will most likely evolve over the life of the direct participation program. We direct the Utilities to develop an initial proposal for enforcement of Rule 24 similar to that in the California Solar Initiative

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[128] Slamming is the practice, more often seen in telecommunications, where a provider changes a customers' service from one provider to another without the customer's consent.

[129] Reply Comments of Joint Parties on the Proposed DR Rules, October 7, 2011 at 5-6.

Handbook.[130] The enforcement proposal will be discussed during the workshop(s) to finalize Rule 24.

We direct the Utilities to revise the proposed Electric Rule 24, in order to make it consistent with the policies adopted in this decision. The revised redlined draft rule (including the Commission Registration Form, Service Agreement, Customer Information Service Request Form, and enforcement proposal) should be served to the parties of this proceeding no later than 60 days from the issuance of this decision. Interested stakeholders, including parties to this proceeding, should send comments on the revised draft to Commission staff no later than 30 days after the draft rule is mailed. The comments should be focused on recommendations for refinements to the rule, especially the technical matters not addressed in this decision. Stakeholders may comment on revisions to the draft rule made by the Utilities that they consider inconsistent with this decision.

We direct staff to hold a workshop(s) within 150 days of the issuance of this decision to finalize the proposed Electric Rule 24. All stakeholders are invited to participate in the workshop(s) and the refinement of the draft rule. The Utilities must work with the stakeholders to finalize an agreed upon proposed Rule 24 and submit it with an advice letter requesting Commission approval. The Advice Letter should be submitted no later than 90 days following the workshop. The Advice Letter should request approval of a Rule 24, including the enforcement proposal, the Commission Registration Form,

[130] California Solar Initiative Program Handbook, September 2012, at Section 4.10. See http://www.cpuc.ca.gov/NR/rdonlyres/09572F1A-13F2-47B6-A007-87B57998EE71/0/CSI_Handbook_September2012.pdf

the Service Agreement, the Customer Information Service Request Form, and the standard customer notification letter.

6. Recovery for Costs Incurred in the Implementation of Direct Participation

We recognize that the Utilities will incur costs related to the implementation of Direct Participation. Hence, within 90 days of the approval of Rule 24, we direct the Utilities to file applications requesting recovery of costs to be incurred as a result of the implementation of DR Direct Participation in the CAISO markets.

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 14, 2012 by the CAISO, DACC/AReM, DRA, EnerNOC, NAPP, PG&E, SCE, and SDG&E. Reply comments were filed on November 19, 2012 by the CAISO, DACC/AReM, DRA, EnerNOC, Marin Energy Authority, PG&E, SCE, and SDG&E. Additions and revisions have been made throughout the decision as appropriate in response to the comments received.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

Findings of Fact

1. Cost-effective demand response and generation sources should be compensated equally.
2. Bids at or above the net benefits test are likely to be cost-effective.

3. The current CAISO PDR tariff still provides a default load adjustment for bids below the net benefits test.

4. Bids below the net benefits test are uneconomical and send the wrong price signals.

5. The Commission has the authority to determine the terms and conditions for direct bidding by retail customers of demand response resources in wholesale energy markets.

6. Demand response service should be defined in a generic, all-inclusive manner.

7. A purpose of this proceeding is to encourage direct participation in the CAISO market by third parties as well as customers – either through the third parties or on their own.

8. The Utilities' proposed definition of demand response service would not allow for individual customers to participate in programs independent of a demand response provider.

9. D.10-06-002, as modified by D.10-12-060, provides that the Commission's regulation of demand response providers is reasonable and lawful.

10. D.10-06-002, as modified by D.10-12-060, limited consumer protections regulations to those demand providers serving residential and small commercial retail customers.

11. The Commission has made it a policy to require registration with the Commission of entities we regulate, no matter what our degree of regulatory authority over the entity.

12. Medium and large commercial and industrial customers with contractual obligations to demand response providers have existing legal protections through statutory mandates.

13. Public Utilities Code Section 331(h) defines small commercial customer as a customer that has a maximum peak demand of less than 20 kilowatts.

14. For the sake of consistency, there should be one standard definition for the term, small commercial customer, to be used across all utilities.

15. There is a difference between enrollment in a demand response program being bid into the CAISO market and participation in a demand response program provided by the Utilities.

16. Dual participation in an energy program and a capacity-based program is allowed in demand response programs provided by the Utilities and not bid into the CAISO market.

17. The Commission has previously stated that it would not reconsider multiple participation rules for direct participation in the CAISO markets until we have gained experience with single PDR participation.

18. At this time, we have no experience with direct participation programs in the CAISO markets.

19. Using the Demand Response Service Request process could lead to competitive barriers.

20. The key difference between the Customer Process and the DR Process is that the Customer Process does not require the Utilities' acceptance prior to a DR provider enrolling a customer into a third-party DR Service upon receiving the customer's information.

21. The Demand Response Service Request process has not been created.

22. The expansion of the existing Customer Information Service Request process is a simpler, stream-lined approach as opposed to the simultaneous use of the current Customer Information Service Request process and a new, yet to be created Demand Response Service Request process.

23. The Utilities have not provided verification that expanding the existing Customer Information Service Request process is more time consuming than creating the new Demand Response Service Request process.

24. There is simplicity in expanding the use of the existing Customer Information Service Request.

25. The Commission's intent is to create streamlined processes for its programs.

26. The KYZ pulse data puts the control of the estimated settlement quality meter data in the hands of the demand response provider.

27. Under the CAISO's tariff, the demand response provider's scheduling coordinator, not the Meter Data Management Agent, is the entity responsible for providing accurate and timely estimated settlement quality meter data to the CAISO.

28. The Meter Data Management Agents are responsible for providing the actual Settlement Quality Meter Data to the demand response provider's scheduling coordinator to facilitate final meter data submission in accordance with the CAISO.

29. The Commission's intention is to provide an efficient registration process.

30. Clarification is required to decipher between the short registration form and long registration form referenced in the draft Rule 24.

31. There is a need to expeditiously resolve disputes regarding customer enrollments.

32. It is not the role of the Utilities or Commission staff to determine disputes.

33. The notification letter sent to customers following enrollment is a valuable method to educate and protect customers participating in demand response programs.

34. The Commission has extended its Privacy and Security Protections to all customers of Community Choice Aggregators and residential and small commercial customers of Energy Service Providers.

35. It is efficient to make any necessary changes to the Customer Information Service Request Process form, related to privacy issues, through the R.08-12-009 proceeding.

36. The Commission is committed to ensuring the confidentiality of customer data.

37. Demand response providers should inform the Utilities when a customer has resigned from a demand response program by providing that customer's authorization.

38. The Commission's demand response registration approval process obligates all demand response providers to comply with the relevant sections of the direct participation rule.

39. The demand response service agreement is between the demand response provider and the Utility.

40. Security deposits for demand response providers should be in the form of a performance bond, the same as that required for certificates of public convenience and necessity.

41. The Commission requires performance bonds for the purposes of the collection of fines, penalties, or restitution related to enforcement.

42. This decision does not establish fines or penalties at this time.

43. There is nothing in the record of this proceeding to establish a dollar amount for restitution.

44. Disputes regarding payments to customers by non-Utility demand response providers is not an issue between providers and the Utilities and

should be brought before the Commission through appropriate complaint processes.

45. The only reason to require credit deposits from demand response providers is to ensure that those providing services to demand response providers will be compensated for those services.

46. There are several examples in the three direct participation proposals where the Utilities could incur costs as a result of providing services to a demand response provider.

47. Rule 22, the Energy Service Providers Rule, is an appropriate comparison to determine credit requirements for the proposed Rule 24.

48. The current proposed credit requirement of twice the monthly maximum revenues from the CAISO is not relevant to the payment for services required in this program.

49. It is not efficient or a good use of resources to develop and implement a separate set of procedures to address demand response disputes.

50. The Commission's current complaint resolution processes are appropriate to resolve disputes in the direct participation program.

51. There is no known incentive for a demand response provider to slam a customer.

52. It is not necessary at this time to require the development of a rule to protect against slamming.

53. There are several remaining unresolved technical and administrative aspects of the direct participation rule.

Conclusions of Law

1. We should not require financial settlements for bids at or above the net benefits test.

2. We should not allow demand response providers to bid below the net benefits test.

3. It is reasonable to require all demand response providers to register with the Commission.

4. We should provide a light touch to the regulation of non-Utility demand response providers serving medium and large commercial and industrial customers.

5. We should only require a performance bond from non-Utility demand response providers serving residential and small commercial customers.

6. We should not revise our policy regarding multiple enrollment in demand response direct participation programs in the CAISO markets.

7. It is reasonable to adopt an expansion of the current Customer Information Service Request Process (Customer Process) as opposed to adopting the current Customer Process in addition to creating a new Demand Response Service Request Process.

8. It is reasonable to allow the use of the KYZ pulse data or its equivalent for preliminary settlement purposes.

9. It is reasonable to use, on an interim basis, the Commission's established Complaint Processes where the Commission resolves disputes.

10. We should collect data to determine whether or not the Current Complaint Processes are as expedient as necessary for the purposes of resolving disputes regarding customer enrollments.

11. It is reasonable to require that the notification letter to newly enrolled demand response customers be developed collaboratively by all parties to ensure that the terms and conditions are presented to customers in a clear and unambiguous manner.

12. The Commission should apply the Privacy and Security Protections to customers of the direct participation program.

13. It is reasonable to consider the action of demand response providers enrolling customers in third party demand response programs for the purposes of bidding into the CAISO market to be a secondary purpose.

14. The Uniform Electronic Transaction Act does not apply to the direct participation rule unless, and until, a demand response provider and a Utility agree to conduct the transaction by electronic means.

15. The Uniform Electronic Transaction Act does not allow the Commission to require, prohibit, or regulate the use of an electronic signature in the direct participation transactions because the Commission is not a party in the transactions.

16. Staff should use, as a starting point for workshop discussion, the service agreement proposed by the Joint Parties 2011 in the May 2, 2011 proposal.

17. The Commission should review a proposed demand response service agreement simultaneously with the review of a proposed direct participation rule.

18. It is reasonable to expect the Utilities to incur costs as a result of providing services to the demand response providers.

19. It is reasonable to require the same security deposit level as that provided for Energy Service providers.

20. Residential and small commercial customers of non-Utility demand response providers should have access to our Complaint Resolution Processes.

O R D E R

IT IS ORDERED that:

1. All demand response providers bidding bundled customers' loads into the California Independent System Operators' wholesale energy market must submit bids that are at or above the net benefits test.

2. The Electric Rule 24, Direct Participation for Demand Response shall include the following definition of demand response service:

> Demand response activities associated with a demand response provider's or a customer's direct participation in the California Independent System Operator's wholesale energy market where a retail customer either on its own or enrolled in a demand response service changes its electric demand in accordance with the market awards and dispatch instructions established by the California Independent System Operator.

3. The following entities are subject to Electric Rule 24:

- Utilities acting as a Demand Response Provider, Load Serving Entity, Utility Distribution Company, Meter Data Management Agent, or Meter Service Provider;
- Utility-affiliates acting as Demand Response Providers;
- Non-Utility Demand Response Providers serving bundled customers; and
- Bundled Customers acting as a Demand Response provider for its own load.

4. The following entities are exempt from Electric Rule 24:

- Non-Utility Demand Response providers serving Direct Access and Community Choice Aggregation customers;
- Direct Access or Community Choice Aggregation customers acting as a Demand Response provider for its own load; and
- Energy Service Providers and Community Choice Aggregators acting as a Load Serving Entity for Direct Access or Community Choice Aggregation service customers.

5. All non-Utility demand response providers must register with the Commission, comply with Electric Rule 24, and sign the applicable agreement with the California Independent System Operator and the applicable utility.

6. Electric Rule 24 will use the term, "small commercial customer," and define it as a customer that has a maximum peak demand of less than 20 kilowatt.

7. Demand response providers are prohibited from enrolling a customer in the California Independent System Operator's market who is already enrolled with another demand response provider.

8. Demand response providers are prohibited from enrolling customers in a demand response service where the load is bid into the California Independent System Operator's market if that customer is already enrolled in a Utility event-based demand response program.

9. Electric Rule 24 must require the use of the expanded Customer Information Service Request Process.

10. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must work with stakeholders during staff-led workshop(s) to refine and define the fields needed on the form used in the Customer Information Service Request Process.

11. KYZ pulse data, or its equivalent, may be used for estimated settlement quality meter data.

12. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, as the Meter Data Management Agent, are responsible for providing the actual Settlement Quality Meter Data to the demand response provider's Scheduling Coordinator to facilitate final data submission in accordance with the CAISO tariff.

13. Electric Rule 24 must contain one registration form for all demand response providers to complete. The first section, with only the most vital information needed by the Commission, must be completed by all demand response providers. Non-Utility demand response providers serving residential and small commercial and industrial customers must complete all other sections.

14. The registration form in Attachment B of the Proposed Draft Rule 24 must be used as a template for finalizing the registration form during staff-led workshop(s).

15. Electric Rule 24 must require the use of current Commission Complaint Processes, including the Expedited Complaint Procedure, to resolve all disputes.

16. Commission staff must collect the relevant data regarding enrollment disputes during the first year after implementation of Electric Rule 24. Staff must provide a report to the Commission and Stakeholders containing an analysis of the data, the impacts of the complaint process on demand response providers and customers, and a recommendation by staff to either continue the process, as is, or revisit.

17. Demand response providers must work with Commission staff to develop an initial draft notification letter to new customers enrolling in demand response programs. Staff must provide the final draft to stakeholders and allow an opportunity to provide input. Commission staff review of the notification letter is limited to ensuring whether the terms and conditions are presented clearly and unambiguously. Commission staff will not evaluate any other aspects of the terms and conditions of the letter.

18. The following language regarding privacy is adopted for Electric Rule 24:

> The requestor must have written customer authorization using Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison

> Company's Form 79-1095, Authorization to Receive Customer Information or Act Upon a Customer's Behalf to release such information to the inquiring party only (commonly referred to as the Customer Information Service Request). At the customer's request, this authorization may also indicate whether the customer information may be released to other parties as specified by the customer. The demand response provider agrees to abide by Public Utilities Code Section 8380, the Commission's Rules Regarding Privacy and Security Protections for Energy Usage Data and any other privacy and security rules established by the Commission.

19. Demand response provider services for the purposes of bidding into the California Independent System Operator market are considered a secondary purpose.

20. Changes to the Customer Information Service Request form, addressed within Rulemaking 08-12-009, must be incorporated into Electric Rule 24.

21. Non-Utility demand response providers must notify the appropriate utility to terminate the transmittal of customer usage data when a customer disenrolls from the demand response provider's service and provide proper customer authorization.

22. The process for terminating the KYZ pulse device in the event of a disenrollment must be determined during staff-led workshop(s).

23. Pursuant to Decision 11-07-056 and Public Utilities Code Section 8380, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company are responsible for the protection of customer information and must only transmit metered data to third-parties that have the proper customer permissions.

24. Specifics for a final service agreement are to be discussed during the staff-led workshop(s). The service agreement proposed by the Joint Parties 2011 in the May 2, 2011 proposal must be the template for the final service agreement.

25. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must submit, via a Tier Three Advice Letter, a proposed service agreement simultaneously with the proposed Electric Rule 24 no later than 90 days following the staff-led workshop(s).

26. The security deposit for non-utility demand response providers serving residential and small commercial customers must be in the form of a performance bond under the name of the Commission. The amount will be discussed during the staff-led workshop(s).

27. Within 90 days of the adoption of Electric Rule 24, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must submit applications requesting review and approval of tariffs for the recovery of costs incurred as a result of providing services to demand response providers.

28. Upon adoption of final credit requirements in Rulemaking 07-05-025, those requirements must be incorporated into Electric Rule 24.

29. Until the final credit requirements in Rulemaking 07-05-025 are adopted, Rule 24 must require that demand response providers establish a security deposit limited to twice the estimated maximum monthly bill for the utility charges.

30. Electric Rule 24 must utilize the same complaint resolution processes the Commission currently utilizes with an emphasis on the Expedited Complaint Procedures.

31. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must create a proposal for an Electric Rule 24 enforcement mechanism based upon that found in the California Solar Initiative Handbook.

32. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must revise the proposed Electric Rule 24 to make it consistent with the policies adopted in this decision. The redlined version with the proposed enforcement mechanism along with the Commission Registration Form, Service Agreement, and Customer Information Service Request Form, must be served to parties of this proceeding no later than 60 days from the issuance of this decision.

33. Interested stakeholders, including parties to this proceeding, may send comments on the revised Rule 24 no later than 30 days after the red-lined version is mailed. The comments should focus on recommendations for refinements to the rule, especially those technical matters not addressed in this decision, and should be served to everyone on the service list to this proceeding but may include comments on inconsistencies with this decision.

34. Commission staff must hold a workshop(s) within 150 days of the issuance of this decision to finalize the proposed Electric Rule 24. All stakeholders, including parties to this proceeding are invited to participate in the workshop(s).

35. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must work with the stakeholders to finalize an agreed-upon proposed Electric Rule 24 with an enforcement mechanism and submit it, along with the Service Agreement, Registration Form, Customer Information Service Request form and standard customer notification

letter, via a Tier Three Advice Letter no later than 90 days following the workshop(s).

36. Within 90 days of the adoption of Electric Rule 24, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company may file applications requesting recovery of costs incurred as a result of the implementation of Electric Rule 24 and Demand Response Direct Participation in the California Independent System Operator's Wholesale Energy Markets.

37. Rulemaking 07-01-041 is closed.

This order is effective today.

Dated November 29, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

APPENDIX A

List of Acronyms and Abbreviations used throughout this Decision

A.	Application
ALJ	Administrative Law Judge
AReM	Alliance for Retail Energy Markets
CAISO	California Independent system Operator
Customer Process	Customer Information Service Request Process
D.	Decision
DR	Demand Response
DRA	Division of Ratepayer Advocate
DACC	Direct Access Customer Coalition
DLA	Default Load Adjustment
DR Process	Demand Response Service Request Process
DRSG	Demand Response and Smart Grid Coalition
FERC	Federal Energy Regulatory Commission
G.	Generation
ISO	Independent System Operator
LMP	Locational Marginal Price
LSE	Load Serving Entity
MRTU	Market Redesign and Technology Upgrade
NAPP	North America Power Partners
NBT	Net Benefits Test
PDR	Proxy Demand Resource
PG&E	Pacific Gas and Electric Company
R.	Rulemaking
RDRR	Reliability Demand Response Resource
SCE	Southern California Edison Company
SDG&E	San Diego Gas & Electric Company
Utilities	Jointly, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company

(END OF APPENDIX A)

APPENDIX B

Commission Staff Proposed Energy Rule 24
Direct Participation Demand Response

APPENDIX C

Joint Parties Proposed Service Agreement

Pacific Gas and Electric Company

DEMAND RESPONSE PROVIDER (-DRP) SERVICE AGREEMENT

This Demand Response Provider (-DRP) Service Agreement ("Agreement") is made and entered into as of this ____ day of _____, _____, by and between "_____ _____" ("-DRP"), a _____ _____ organized and existing under the laws of the state of _____, and the load-serving entity ("LSE"), "Pacific Gas and Electric Company's" ("PG&E's"), wherein PG&E is a corporation organized and existing under the laws of the state of California. From time to time, -DRP and LSE shall be individually referred to herein as a "Party" and collectively as the "Parties."

Section 1: General Description of Agreement

1.1 This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which DRP shall offer direct participation demand response services in wholesale market transactions with retail customers in PG&E's service territory (" Demand Response Service" as defined in Rule 1 and as defined in the attached Appendix). Each Party, by agreeing to undertake specific activities and responsibilities for or on behalf of customers, acknowledges that each Party shall relieve and discharge the other Party of the responsibility for said activities and responsibilities with respect to those customers. Except where explicitly defined herein (including Attachment A hereto) the definitions controlling this Agreement are contained in PG&E's Rule 1, Definitions or Rule 24, Direct Participation Demand Response.

1.2 The form of this Agreement has been developed as part of the CPUC regulatory process, was intended to conform to CPUC directions, was filed and approved by the CPUC for use between a utility Load Serving Entity (LSE) and DRPs participating in the wholesale market, and may not be waived, altered, amended or modified, except as provided in i.) herein or in Rule 24 or ii.) as may otherwise be authorized by the CPUC provided that any amendment or modification under subparagraph (ii) must be promptly disclosed in writing to DRP and in the event such amendment or modification is deemed, in DRP's sole discretion, to be a material amendment or modification, DRP may terminate the Agreement.

Section 2: Representations

2.1 Each Party represents that it is and shall remain in compliance with the terms of this Agreement and Rule 24.

2.2 Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.

2.3 Each Party represents that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or

other action by such Party; and (c) this agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.

2.4 Each Party shall (a) exercise all reasonable care, diligence, and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

Section 3: Term of Service

The term of this Agreement shall commence on the date of execution by both Parties hereto (the "Effective Date") and shall terminate on the earlier of (a) the date the DRP informs the LSE that it is no longer operating as a DRP for the LSE's customers; (b) upon termination pursuant to Section 4 hereof; or (c) the effective date of a new DRP Service Agreement between the Parties hereto. Notwithstanding the Effective Date of this Agreement, the DRP acknowledges that it may only offer Demand Response Activity Service to customers effective on or after the CPUC-approved date for commencement of such services by DRPs, and only after it has complied with all provisions of this Agreement and PG&E's Electric Rule 24.

Section 4: Events of Default and Remedy for Default

4.1 An Event of Default under this Agreement shall include either Party's material breach of this Agreement or PG&E's Electric Rule 24 and failure to cure such breach within thirty (30) calendar days of receipt of written notice thereof from the non-defaulting Party .

4.2 In the event of such an Event of Default that is not cured under 4.1, the non-defaulting Party shall be entitled (a) to exercise any and all remedies available under PG&E's Electric Rule 24; (b) to the extent not inconsistent with PG&E's Electric Rule 24, to exercise any and all remedies provided for by law or in equity; and (c) in the Event of Default, and failure to cure, to terminate this Agreement upon written notice to the other Party which shall be effective upon the receipt thereof.

4.3 An Event of Default, and failure to cure, by any Party hereto of any material provision of this Agreement or PG&E's Electric Rule 24 shall be governed by applicable provisions contained therein and each Party will retain all rights granted thereunder.

Section 5: Billing, Metering, and Payment

5.1 Metering services that are available to the -DRP shall be as described in PG&E's Electric Rule 24.

5.2 PG&E, acting as the LSE, will bill and the DRP agrees to pay PG&E for all services and products provided by PG&E, and approved by the CPUC, related to direct participation demand response services in accordance with the terms and conditions set forth in PG&E's Electric Rule 24. Any services provided by the DRP to PG&E shall be by separate agreement between the Parties and are not a subject of this Agreement.

5.3 PG&E, as the MDMA, agrees to provide meter data to the DRP, in accordance with

PG&E's Electric Rule 24 as necessary to allow the DRP to settle with the CAISO and in accordance with CPUC Orders. MDMA services, requested by the DRP, may be provided by PG&E subject to a separate agreement.

5.4 DRP may utilize and acquire electric energy usage data from Data Pulse Equipment installed by PG&E so long as DRP has obtained customer consent for such utilization and so long as acquisition of data and such utilization does not interfere with PG&E's metering equipment. DRP will be responsible for installation costs. Subject to CAISO approval, this data may be used for revenue quality meter data purposes and satisfy the telemetry requirement.

Section 6: Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the total amount paid to PG&E under this Agreement during the six-month period immediately preceding the event giving rise to the claim(s). In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

Section 7: Indemnification

7.1 To the fullest extent permitted by law, and subject to the limitations set forth in Section 6 of this Agreement, each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, and its current and future direct and indirect parent companies, affiliates and their shareholders, officers, directors, employees, agents, servants and assigns (collectively, the "Indemnified Party") from and against any and all third-party claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including, but not limited to, the Indemnified Party's employees and its affiliates' employees, subcontractors and subcontractors' employees, or any other liability incurred by the Indemnified Party, including reasonable expenses, legal and otherwise, which shall include reasonable attorneys' fees, caused wholly or in part by any negligent, grossly negligent or willful act or omission by the Indemnifying Party, its officers, directors, employees, agents or assigns arising out of this Agreement, except to the extent caused wholly or in part by any negligent, grossly negligent or willful act or omission of the Indemnified Party.

7.2 If any claim covered by Section 7.1 is brought against the Indemnified Party, then the Indemnifying Party shall be entitled to assume the defense of such claim. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

7.3 The Indemnifying Party's obligation to indemnify under this Section 7 shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any statutory scheme, including, without limitation, under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

Section 8: Assignment and Delegation

8.1 Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this Section 8 shall be void.

8.2 Notwithstanding the provisions of this Section 8, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, shall serve as the point of contact between its subcontractor and the other Party, and shall provide the other Party with thirty (30) calendar days' prior written notice of any such subcontracting, which notice shall include such information about the subcontractor as the other Party shall reasonably require, and provided further that each Party may subcontract its obligation to provide Metering or Meter Reading Services under this Agreement only to subcontractors who have complied with all certification or registration requirements described in applicable law, CPUC rules and PG&E's Electric Rule 24. If either Party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner which is in conformity with that Party's obligations under this Agreement.

Section 9: Independent Contractors

Each Party shall perform its obligations under this Agreement (including any obligations performed by a Party's designees as permitted under Section 8 of this Agreement) as an independent contractor.

Section 10: Entire Agreement

This Agreement consists of, in its entirety, this Demand Response Provider Service Agreement and all attachments hereto, and all Demand Response Service Requests submitted pursuant to this Agreement and PG&E's Electric Rule 24. This Agreement supersedes all other service agreements or understandings, written or oral, between the Parties related to the subject matter hereof.

Section 11: Nondisclosure

11.1 Neither Party may disclose any Confidential Information obtained pursuant to this

Agreement to any third party, including affiliates of such Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party, any trade secrets, and other information of a similar nature, whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to this Agreement or from a party who was under an obligation of confidentiality to the other Party to this Agreement or information developed by either Party independent of any Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving Party shall, upon termination of this Agreement or at any time upon the request of the disclosing Party, promptly return or destroy all Confidential Information of the disclosing Party then in its possession.

11.2 Notwithstanding the foregoing, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

Section 12: Enforceability

If any provision of this Agreement or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

Section 13: Notices

13.1 Except as otherwise provided in this Agreement, any notices under this Agreement shall be in writing and shall be effective upon delivery if delivered by (a) hand; (b) email; (c) U.S. Mail, first class postage pre-paid, or (d) facsimile, with confirmation of receipt to the Parties as follows:

If the notice is to the DRP:

Company Name ----------
Contact Name: _____

Business Address: _____

e-mail address _____

_____

Facsimile: _____

If the notice is to the LSE:

Contact Name: _____

Business Address: _____

_____

_____

e-mail address

Facsimile: _____

13.2 Each Party shall be entitled to specify as its proper address any other address in the United States upon written notice to the other Party.

13.3 Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters relating to Demand Response Service. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party.

Section 14: Time of Essence

The Parties expressly agree that time is of the essence for all portions of this Agreement.

Section 15: Dispute Resolution

15.1 The form of this Agreement has been filed with and approved by the CPUC as part of PG&E's applicable tariffs. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of PG&E's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending such resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, except if this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes, unless the parties mutually agree to pursue mediation or arbitration to resolve such issues. Resolution by the CPUC does not prevent either party from seeking recourse through the courts or other means.

15.2 Any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the DRP's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending resolution, the Parties shall proceed diligently with the performance of their respective obligations under this Agreement, except if this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes, as the parties may pursue remedies allowed by law or in equity, or, the parties may mutually agree to pursue mediation or arbitration to resolve such issues.

15.3 If the dispute involves a request for damages, parties are notified that the Commission has no authority to award damages. To resolve such issues, the parties may mutually agree to pursue mediation or arbitration to resolve such issues, or if no agreement is reached, to pursue other legal remedies that are available to the parties.

15.4 PG&E's Electric Rule 24 provides a separate process for resolution of disputes between the parties dealing with PDR registrations in CAISO

Section 16: Applicable Law and Venue

This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of California, and shall exclude any choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance. Except for matters and disputes with respect to which the CPUC is the initial proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in San Francisco County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

Section 17: Force Majeure

Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any event of force majeure or other cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. It is agreed that upon the Party so affected giving written notice and reasonably full particulars of such force majeure to the other Party within a reasonable time after the cause relied on, then the obligations of the Party, so far as they are affected by the event of force majeure, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied with all reasonable dispatch. In the event of force majeure, as described herein, both Parties shall take all reasonable steps to comply with this Agreement and PG&E's Electric Rule 24 despite occurrence of a force majeure event.

Section 19: Not a Joint Venture

Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

Section 20: Conflicts Between this Agreement and PG&E's Electric Rule 24

Should a conflict exist or develop between the provisions of this Agreement and PG&E's Electric Rule 24, Rule 24 shall prevail.

Section 21: Amendments or Modifications

21.1 Except as provided in Section 1.2, no amendments or modifications shall be made to this Agreement, in whole or in part, by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade. If this is a CPUC approved contract, modifications will need to be approved by the Commission. However, to the extent this Agreement is modified from the date of execution of this Agreement in a material way, such changes shall be applicable upon the execution of a new Agreement between the parties and shall not be retroactively applied to this Agreement. To the extent modifications to this Agreement are not acceptable to either Party, the Party may terminate the Agreement upon notification to the counter Party.

21.2 This Agreement may be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement to conform to changes directed or necessitated by the CPUC. In the event the Parties are unable to agree on the required changes or modifications to this Agreement, their dispute shall be resolved in accordance with the provisions of Section 15 hereof or, in the alternative, DRP may elect to terminate this Agreement upon written notice to PG&E, which shall be effective upon the receipt thereof. PG&E retains the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application for a change in PG&E's rates, charges, classification, service, or rules, or any agreement relating thereto.

Section 22 Audits

22.1 When the DRP reasonably believes that errors related to metering or billing activity may have occurred, the DRP may request the production of such documents as may be required to verify the accuracy of such metering and consolidated billing. Such documents shall be provided within ten (10) business days of such request. In the event the requesting Party, upon review of such documents, continues to believe that the other Party's duty to accurately meter and provide consolidated billing for usage has been breached, the requesting Party may direct that an audit be conducted. The LSE and the DRP shall designate their own employee representative or their contracted representative to audit the other party's records.

22.2 Any such audit shall be undertaken by the LSE, the DRP, or their contracted representative at reasonable times without interference with the audited Party's business operations, and in compliance with the audited Party's security procedures. PG&E and the DRP agree to cooperate fully with any such audit.

22.3 Specific records to support the accuracy of meter data provided in the settlement process may require examination of billing and metering support documentation maintained by subcontractors. The LSE and the DRP shall include a similar clause in their agreements with their subcontractors reserving the right to designate their own employee representative, or their contracted representative to audit records related to the settlement process for Direct Participation Demand Response Service Customers.

22.4 The auditing Party will notify the audited Party in writing of any exception taken as a result of an audit. The audited Party shall refund the amount of any undisputed exception to the auditing Party within ten (10) days. If the audited Party fails to make such payment, the audited Party agrees to pay interest, accruing monthly, at a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California. Interest will be computed from the date of written notification of exceptions to the date the audited Party reimburses the auditing Party for any exception. The cost of such audit shall be paid by the auditing Party; provided, however, that in the event an audit verifies overcharges of five percent (5%) or more, then the audited Party shall reimburse the auditing Party for the cost of the audit.

22.5 This right to audit shall extend for a period of three (3) years following the date of final payment under this Agreement. Each party and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

Section 23: Miscellaneous

23.1 Unless otherwise stated in this Agreement: (a) any reference in this Agreement to a section, subsection, attachment or similar term refers to the provisions of this Agreement; (b) a reference to a section includes that section and all its subsections; and (c) the words “include,” “includes,” and “including” when used in this Agreement shall be deemed in each case to be followed by the words “without limitation.” The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement

23.2 The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. The provisions of this Agreement shall not impart rights enforceable by any person, firm, or organization other than a Party or a successor or assignee of a Party to this Agreement.

23.3 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

23.4 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing.

23.5 Each Party shall be responsible for paying its own attorneys’ fees and other costs associated with this Agreement, except as provided in Sections 6 and 7 hereof. If a dispute exists hereunder, the prevailing Party, as determined by the dispute resolution procedure contained in Section 15 hereof, if used, or by a court of law, shall be entitled to reasonable attorneys’ fees and costs.

23.6 To the extent that the CPUC has a right under then-current law to audit either Party’s compliance with this Agreement or other legal or regulatory requirements pertaining to Demand Response Activity Service transactions, that Party shall cooperate with such

audits. Nothing in this Section shall be construed as an admission by either Party with respect to the right of the CPUC to conduct such audits or the scope thereof.

23.7 Except as otherwise provided in this Agreement, all rights of termination, cancellation or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy in this Agreement.

The Parties have executed this Agreement on the dates indicated below, to be effective upon the later date.

On Behalf of DRP		On Behalf of LSE	
Company name		Company Name	
By:	_____	By:	
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

ATTACHMENT A

A. Definitions relative to this Agreement:

Demand Response Provider (DRP): As defined in CAISO's Tariff.

Direct Participation Demand Response Service Customer - An end-use customer located within PG&E's service territory who elects to participate in Direct Participation Demand Response Services through a DRP.

B. Contact Persons (Section 13.3):

1. Metering and Meter Reading Services

LSE Contact:

Email Address	

DRP Contact:

Email Address	

MDMA	

Contact:	
Email Address	

C. Parties' Representatives (Section 15.1):

LSE Representative: _____

Contact Name: _____

Business Address: _____

Phone Number _____

_____

Email Address _____

DRP Representative: _____

Contact Name: _____

Business Address: _____

E-mail Address:

Phone Number _____

_____

(END OF APPENDIX C)